UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

- x

In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, NY 10601

January 24, 2020

10:29 AM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: SHEA

HEARING re Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement /Motion of Debtors for Entry of an Order Extending the Exclusive Periods within which to File a Chapter 11 Plan and Solicit Acceptances Thereof

HEARING re Motion of Debtors for Entry of an Order Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers (ECF 6)

HEARING re Objection of UST (ECF 134)

HEARING re Nevada Counties and Municipalities' Joinder to the Objection of UST (ECF 190)

HEARING re The Commonwealth of Pennsylvania's Joinder to the Objection of the UST (ECF 190)

HEARING re Joinder/Objection of the Ad Hoc Group of Non-consenting States (ECF 197)

HEARING re Joinder of the State of Arizona to the Objection of the UST (ECF 201)

HEARING re Letter of Linda A. Lacewell, Superintendent of New York State Department of Financial Service Re: Request Payments to Purdue Pharma Employees (ECF 99)

HEARING re UST's Objection (related document(s)6) filed by Paul Kenan Schwartzberg on behalf of United States Trustee (ECF 134)

HEARING re Nevada Counties and Municipalities' Joinder to (related document(s) 134) filed by Vadim J. Rubinstein on behalf of Nevada Counties and Municipalities (ECF 190)

HEARING re Objection to Motion (related document(s)6) filed by Melissa L. Van Eck on behalf of Commonwealth of Pennsylvania (ECF 196)

HEARING re Joinder/Objection by the Ad Hoc Group of Non-Consenting States (related document(s)6) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting States (ECF 197)

HEARING re Joinder/Objection with the United States Trustee (related document(s)6) filed by Seth Adam Meyer on behalf of State of Arizona (ECF 201)

HEARING re Letter of Superintendent Linda A. Lacewell, Filed by Nicolas G. Keller on behalf of New York State Department of Financial Services (ECF 99)

HEARING re Response regarding severance for former Purdue Pharma LP employees (related document(s)6, 62) filed by Dan Colucci (ECF 103)

HEARING re Letter to Judge Drain from former employee and unemployment benefits Filed by John Taormina (ECF 327)
STATEMENT OF THE AD HOC GROUP OF NON-CONSENTING STATES MAINTAINING ITS OBJECTION TO PURDUES WAGE MOTION INSOFAR AS IT RELATES TO PURDUE CEO CRAIG LANDAU (related document(s)6) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting States (ECF 557)

HEARING re Statement State of Maryland's Additional Statement With Respect to the Payment of Bonuses Under Debtors' Wage Motion to Any Recipient Who Participated in

HEARING re Debtors' Unlawful Conduct (related document(s)6) filed by Brian Edmunds on behalf of State Of Maryland (ECF 559)

HEARING re Debtors' Motion for Entry of an Order (I) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto, (II) Approving the Proof of Claim Forms, and (III) Approving the Form and Manner of Notice Thereof filed by James I. Mcclammy on behalf of Purdue Pharma L.P. (ECF 717)

HEARING re Debtors' Memorandum of Law in Support of Motion for Entry of an Order (I) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto, (II) Approving the Proof of Claim Forms, and (III) Approving the Form and Manner of Notice Thereof (related document(s)717) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF 718)

HEARING re Objection to Motion Limited Objection and/or Conditional Consent with Reservation of Rights of the NAS Children AD HOC Committee to Motion of Debtors for Entry of Order (i) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto, (ii) Approving Proof of Claim Forms and (iii) Approving the Form and Manner Thereof

(related document(s)717) (ECF 757)

HEARING re Statement and Reservation of Rights of the Official Committee of Unsecured Creditors in Respect of the Debtors' Motion for Entry of an Order (I) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto, (II) Approving the Proof of Claim Forms, and (III) Approving the Form and Manner of Notice Thereof (related document(s)717) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors (ECF 763)

HEARING re Motion for Relief from Stay filed by George Calhoun IV on behalf of Ironshore Specialty Insurance Company (ECF 712)

HEARING re Debtors' Objection to TI G's Motion for Relief from the Automatic Stay (ECF 753)

HEARING re Objection of the Official Committee of Unsecured Creditors to the Motion of Ironshore Specialty Insurance Company for Relief from Automatic Stay and Joinder to the Debtor's Objection to Such Motion (related document(s)753, 712) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors (ECF 756)

HEARING re Ad Hoc Committees Statement in Support of Debtors Objection to TIGs Motion for Relief From the Automatic Stay (ECF 757)

HEARING re Limited Objection and/or Conditional Consent with Reservation of Rights of the NAS Children AD HOC Committee (ECF 754)

HEARING re Notice of Agenda / Agenda for January 24, 2020 Omnibus Hearing

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RYAN SLAUGH

TRUDY SMITH

CLAUDIA SPRINGER

ABIGAIL R. WOLF

P R O C E E D I N G S

THE COURT: Okay, good morning. In re. Purdue Pharma.

MR. HUEBNER: Good morning, Your Honor. For the record, I am Marshall Huebner of Davis, Polk & Wardwell, LLP, here on behalf of the Debtors. Your Honor, let me begin by wishing you a happy new year. We have not seen you since December.

THE COURT: And happy Chinese New Year.

MR. HUEBNER: And, you know, a few weeks have passed; hopefully, everybody got a little bit of time off with family and friends.

Your Honor, let me begin with what I hope is another is another meaningful and positive progress report with six or so, hopefully, very positive updates that I will tick through very quickly.

Number one, as I think chambers knows because we submitted it under a certificate of no objection -- praise the Lord, the protective order appears to be done. I won't actually spend any more time describing the endless complex multi-party conversations that went into it, except to note that it now appears to have one universal claim, and it's an important step. Many parties have been operating as if it were already in effect, knowing that its terms were largely baked a while ago, but the devil -- quite a few devils were

in the final details. And unless the Court has concerns or comments on it, hopefully, we can check the box on that important document.

THE COURT: So when do you expect to send that to chambers?

MR. HUEBNER: I believe we sent it earlier this week, and it could have been entered as early as yesterday. Now we're just waiting for the Court to enter it. But yet, the Court looks puzzled.

THE COURT: Could you resend it? I actually -- I was in court most of the day yesterday, but I just didn't register it coming in.

MR. HUEBNER: Sure.

THE COURT: You know, I would have I think because it's an important step.

MR. HUEBNER: We will do so forthwith.

THE COURT: Okay, thank you.

MR. HUEBNER: Two, Your Honor, I also have what I hope is a very positive report on the monitor. As, of course, the Court knows because it was the Court's own idea that having a monitor would be helpful, despite the fact that the company stopped promoting opioids and has not actually had a sales force and has, I think, a 15-page or so single-spaced self-injunction, that nonetheless is yet an additional step that the company would hire a monitor.

The way the order entered on the injunction worked was that the company would hire the monitor, but would consult with the states and the creditors' committee as part of doing so. I think it's fair to say that we went way, way beyond what the order required in terms of consulting. We actually considered candidates that were brought to us by creditor constituencies, alongside candidates that we identified ourselves.

Multiple creditor representatives actually fully participated alongside us in the interviews of the monitors, and it would be an understatement to say that we ultimately took the views of the creditors very, very heavily into account in making our selection, which happened yesterday. We're not yet ready to announce the name because we now need to talk about conflicts and contracts and structure and the exact mechanics. I am hopeful that the Court will find that the august personage that we are very excited to have alighted upon will be acceptable to everybody.

But that was also a long road; it's not the simple thing. And, you know, as your Court knows from other cases, monitors can get very complex and grow far beyond the original bounds and sometimes, frankly, you know, there are non-trivial issues. We very much hope that we will avoid all that in part by having been, I think, unusually thoughtful and open on the front end and pick someone of we

think great reputation and integrity.

THE COURT: Okay, thank you.

MR. HUEBNER: Item three is the emergency relief fund, which, candidly, for, you know, my personal liking continues to move more slowly than I would like. You know, we had originally hoped, I think, to have the motion to bring to the Court by January or February at the latest. I actually am hopeful that we're still on track for February; let's have the motion. This was a big week in the life of the emergency relief fund because there are now robust detailed fully articulated proposals that have now been shared among the states, the UCC, and the Debtors.

There's definitely going to be more work to do on kind of a reconciliation process to get down to something that hopefully will work for those parties, but a lot of work has been done and a structural step sort of was achieved this week with proposals now in front of people. And we hope to progress that because, as we note at every hearing, you know, every day that goes by with all of our cash sitting in the bank account and not saving lives is another day that, you know, harm could have been avoided and was not.

So we're cracking the whip, sort of as we know how, but, obviously, there are a lot of parties. It's very complicated, it's a lot of money, it's unusual relief, you

know, and it just -- it is not a simple thing, to say it like that.

THE COURT: Okay.

MR. HUEBNER: Item number four is shareholder and IAC diligence. So just to report to the Court, as the Court probably wouldn't remember because the Court probably has about a thousand cases, we did a tripartite stipulation very early in the case with the Debtors, the UCC, and the shareholders that contemplated, and was later amended to add more things, including a series of deliverables and presentations in the month of January. Those happened; there were very large meetings that included representatives from various parties, detailed presentations were made on various topics, information was given; that also is sort of ticking along.

Let me be very clear: that is not to remotely suggest at all -- at all -- that the Debtors, the UCC, or any of the stakeholders are anywhere near done. In connection with the diligence and information flow and questions and analysis, there is a gargantuan amount still in front of us before people, you know, would be comfortable or make their final decisions on the ultimate disposition of that side of this case. But so far, we have not fallen off track in terms of the things that we're required.

And to the family and shareholders' credit, you

know, a fair amount was delivered and presented; that, of course, has led to many more things that were on the list before and there are many requests pending and discovery letters and things like that. But, you know, it's -- it is proceeding, and I thought that was worth mentioning as well.

Which segues to what is actually both the first agenda item and the fifth, I guess, sort of piece of positive news, which is exclusivity, which I hope to cover in a grand total of 25 seconds. Exclusivity is totally uncontested. There were neither formal nor informal objections, and we ask that the relief that we requested be granted.

Obviously, this is a case of extraordinary complexity. And I hope that if the Court sees, you know, among the things that the Court sees are that we are working day and night and night and day to build a consensus and try to be good stewards for the estate to maximize its value and help Purdue and the resources that will become available through it do good in the world.

And I don't think I need to walk through the motion. It's a relatively standard motion; we ask for 180 days. Seemingly, no one in the entire case objects, which I actually take as a small point of pride, and we ask that the order be entered.

THE COURT: Okay. And I'll take your introductory

remarks as supplementing the record on exclusivity as well on the request to extend it. And before dealing with that motion, I'm not inviting long or even any further statements, but does anyone have anything further to say on the introductory remarks that Mr. Huebner went through?

Okay. I've reviewed the exclusivity extension motion, which was timely filed. As you say, it's unopposed. And based on that, as well as my review and understanding where the case stands, I'll grant the motion. The Debtors have clearly shown sufficient cause for the requested extension, so you can email that order to chambers.

MR. HUEBNER: Thank you, Your Honor. Number six is a similar, and this is why I will be turning the podium over. Number six is another, I think, just fantastic news report, which is the second agenda item on the -- second item on the agenda, which is the bar date.

Jim McClammy, my partner who will be up in here in just a minute, Your Honor, you know, may actually end up getting canonized for his work -- it's true, don't laugh, it's actually literal truth -- for reconciling the endlessly and often diametrically opposed views of an incredible number of parties in this case, many of whom had a lot at stake and extremely passionate views that often, frankly, were just in direct contradiction of other peoples' views that were equally strongly held.

Somehow he has actually gone through the labyrinth, and I believe that we are ready to present, you know, what may end up being maybe even the, but let's just say one of the most complex, intricate, and detailed noticing and bar date motions and orders yet presented. Let me turn the podium to Mr. McClammy to explain what needs to be done and, hopefully, get that order entered as well.

THE COURT: Okay.

MR. MCCLAMMY: Good morning, Your Honor.

THE COURT: Good morning.

MR. MCCLAMMY: Jim McClammy from Davis, Polk & Wardwell on behalf of the Debtors. Had not come here this morning expecting to hear that I might be canonized.

THE COURT: Well, I don't think that I know of any saint whose first name is Jay, but that's okay.

MR. MCCLAMMY: But, Your Honor, as mentioned, I'm here to present on the bar date motion that we filed on January 3rd. With me in Court today from Davis, Polk are my capable colleagues, Jacquelyn Knudson and Esther Towns, who also worked tirelessly on this motion, as well as Shai Waisman and Jeanne Finegan from Prime Clerk, our noticing agent who will be running with this program going forward.

The relief that we're seeking today, Your Honor, is the establishment of a bar date for the filing of proofs of claims in these cases; that would be June 30th of 2020 as

the general bar date. Relief of proving the Debtors' proposed proof of claim forms, including three proof of claim forms specifically tied to people that would be filing claims related to the opioid crisis. There would be a form proposed for personal injury claimants; a form proposed for governmental entities; and then a general opioid claim form for, you know, private individuals or companies that may think that they have claims that are tied to opioid-related issues, but not falling into the governmental or personal injury group; and then a non -- just general claim form for all other claims.

This process really, I think, is truly a testament to the ability of the parties with divergent interests to both advocate, but also to find common ground, and to work in a way that produces an end result that was even better than had been originally proposed.

So for that, the Debtors are very thankful for the constructive involvement of the creditors' committee, the multistate governmental entity group, the ad hoc committee of governmental and other contingent litigation claimants, the ad hoc for the non-consenting states, the ad hoc committee of NAS babies, the ad hoc group of hospitals, and also for the involvement of the Department of Justice in connection with the negotiation and revisions to the order that we will be presenting today.

With all of that, Your Honor, there are essentially no objections remaining to the entry of the order today. You will see that there have been some reservations of rights that have been presented. And I think at this point in time, Your Honor, most of them are tied to see how the program is working kind of going forward.

And I think one of the reasons for that is what we were working on as the Debtors going into this motion from the very beginning is, this is an amazingly comprehensive and expansive notice program. As is set forth in the papers, we're looking to reach, you know, 95 percent or more of the entirety of the adult population in the United States.

It required our agents, the noticing agent Prime Clerk, to think about in developing this program where are people, how can we reach them, how are people reachable in this, you know, social media age? Are there parts of the country that have been more impacted by the opioid crisis that may be more difficult to reach. Do we have populations that are not, you know, as accessible as you might find in other situations.

So the sheer scope of the program, which I will touch on briefly later, has been designed with all of that in mind.

Your Honor, before I proceed further, just one thing for the evidentiary record. I'd like to move into the record the Declaration of Miss Jeanne Finegan, which was Docket No. 719. I believe chambers binder, Tab 2 at 3(b). Miss Finegan is the vice president of notice and media solutions at Prime Clerk and, as noted, she is present here in the court today.

Miss Finegan and her team designed this notice program, one of the largest ever deployed as I mentioned, to reach over 95 percent of the adult population in the U.S. And her declaration sets out the scope of the program, the factors that went into the design of that program, and how the program will be managed going forward.

Your Honor, I would ask that that declaration be entered into evidence.

THE COURT: Okay. Does anyone wish to cross-examine Miss Finegan on her declaration? All right. I have reviewed it. I don't think I need her to get on the stand. I may have a couple of questions; in fact, I probably do. But I think you'll probably be able to answer them; if not, you could probably consult with her and give me a better answer. So having said that, I'll admit the declaration as Miss Finegan's direct testimony.

MR. MCCLAMMY: Thank you, Your Honor. So as I mentioned, Your Honor, the Debtors' notice program was

designed with the assistance of Prime Clerk with the purpose of effectively trying to reach and inform both known and unknown claimants holding a variety of potential claims against the Debtors about the deadlines and the process for going about filing proofs of claim in these cases.

The notice program is going to give actual notice to all of our known claimants. We're going to be sending out mailings to close to a million parties in these cases. And we have, you know, anyone that has been involved in the litigation already -- contact, counterparties, et cetera -- will be getting the actual mailing notice for these cases.

But we also understand that even with all of the litigation that has been commenced to date that it's likely that there are numbers of individuals out there, and at this time, untold how expansive that may be, that may believe that they have claims against these Debtors. And, therefore, we've worked very hard to design and implement a notice program that is going to reach all of those -- all of those potential claimants so that their claims can be brought into this bankruptcy.

And I would say, Your Honor, we view this as a very important stage in these cases. It was noted in the ad hoc committees' statement, submitted in connection with this, that they would prefer to have an agreed resolution on allocation in these cases, and that is completely consistent

with where we are, Your Honor, as to next steps in these cases. But we do believe that starting this claims process and having these claims brought into the Court is an important part of making sure that that agreed allocation is something that is defensible and can be, you know, supported and approved by this Court and having that claims information will be important to that.

But in addition to that, Your Honor, if for some reason we're not able to reach resolution, we believe it's important to have those claims in so that we can continue to move forward in these cases in a timely manner.

So with respect to reaching those beyond claimants that are already known, as I mentioned, it is a really -- it's really a multi-faceted process. And here in the United States, we are looking at not only doing the traditional print media, placing things in newspapers, magazines and things of that nature, but also moving beyond that and using, you know, television, social media -- Facebook, Instagram, things of that nature -- streaming radio, terrestrial radio, certain niche medias in order to reach people, looking at trade associations; certain things that are designed to reach people in particular groups, whether it be parents or, you know, NAS specific, pediatric groups; certain things for the Native-American tribes.

We've looked at each aspect of who it is we're

trying to reach and trying to find a way across various media to reach them. So the program essentially works and kind of builds on itself with the hope that people will have various touchpoints along the way such that, you know, you may see it on TV. And then you may go online and you'll run a search and based on whatever search terms you are using, you will see and be referred to, you know, the website for the bankruptcy, and that website will then have information about filing proofs of claim.

We'll give you the ability to file your proofs of claim online. There'll be frequently asked questions there that will answer what we think will be the questions that people will have as they're going through this process. And then you may see it, you know, videos, movie theaters and areas where it's hard to reach people either through television or the print media. There'll be billboards, there'll be things showing up on screens in movie theaters.

So all across the time from 21 days after the bar date order is entered when the program comments through to the end, we would expect to have, you know, six to eight times, you know, touchpoints of hearing about the fact that the Purdue bankruptcy, knowing that there's a bar date that is June 30th, and pointing people to the website or a phone number so they'll know exactly where to go for the filing of their proofs of claim.

In addition to the scope of the notice program, which indeed may be unprecedented in its scope and its reach, given the need to reach individuals all across the country, we thought it was also important to have tailored proof of claim forms. And those tailored proof of claim forms, as we mention, were designed for both individuals, governmental entities, and then a general opioid claim form to get information that we think will be helpful not only to understanding whether or not people have legitimate claims, but also helpful to the discussions that will be ongoing about allocation.

I will say, Your Honor, the forms as they were originally filed and then as they've been modified and what was submitted to the Court yesterday are the product of a lot of negotiation with the various constituencies and hearing from a lot of people about what the types of questions are, can people really answer them, what the concerns are with filling out the form.

And one of the things that you will see, as I would like to walk you through some of the changes that we're proposing in the order from when it was originally filed, is there was concern for the individuals about confidentiality of the forms, and not just about their own personal information necessarily being out there, but whether filing a claim tied to opioid use might be any way

problematic if it's out there in the public. You know, if you are a caregiver for someone that you believe has NAS, is mentioning that and putting names out there potentially problematic because someone could see that and then perhaps wonder who the mother was of that particular child, and that could cause additional concerns.

So we've tried to mee everyone, as best we could, to address all of those concerns, both about the nature of the questions that were asked, protecting confidentiality, and providing some alternatives into how claims are actually filed in these cases. And we thank the UCC, the states, the multistate governmental entities group and the NAS group for all of their input into that.

The UCC and the NAS group, the MSGE group and the states will also be putting input into media program itself; will be letting us know, you know, online forms that they believe would be helpful to have our information go to. And they've done that already and we've incorporated that information into an adjusted media program in that regard.

So that in general, Your Honor, is the presentation I'd like to have for the Court. I would be happy to answer any questions before walking through the changes in the order, which may also explain some of the things that we're trying to accomplish.

THE COURT: I have a blackline revised proposed

order that was provided when it was filed on the 23rd. Is that the one you're going to be using?

MR. MCCLAMMY: Yes, Your Honor. Docket 776?

THE COURT: Yes.

MR. MCCLAMMY: Yes.

THE COURT: Okay. So if I have questions, they'll come up as we walk through this; if not, I'll raise them after we go through it.

MR. MCCLAMMY: That's perfect, Your Honor. With that, I'll walk through what I believe are the substantive changes to the form of order starting at Page 3 -- Page 4 of 68 at the top for the revised proposed order in the blackline.

In Paragraph 4(a), there was language included here originally at the request of some of the states to just further define the nature of the claims for the opioid claim form to say, "Involving opioids or their production, marketing and sale, including without limitation, the Debtors' production at marketing," because I thought that limiting it to only the production and marketing of the Purdue opioids may have been too limiting, so we were fine accommodating that. We've made one correction just to -- just to the product that had been included in the generic forms. But other than that, I believe, at least on that page, things are straightforward.

With respect to Page 4, this is in subsection (e). We've included, for the avoidance of doubt, that holders asserting the claims of any opioid proof of claim form and the federal government are not required to file separate proofs of claim form against each debtor, with respect to which any such holder may or may have to specify, you know, multiple debtors. If you're filing an opioid proof of claim form, we're going to have that filed in the lead case, and it'll be treated as if it's filed in each of the cases.

THE COURT: And the theory for that is all of the debtors are putting up all of their assets, so there's no intercompany issue.

MR. MCCLAMMY: That's exactly right, Your Honor.

THE COURT: Okay.

MR. MCCLAMMY: And it would also be the case that it may be hard to discern for some of the claimants whether or not they had a Purdue product or Rhodes generic.

THE COURT: Well, but I think just the fact that each debtor is contributing its whole value gets over any concerns about going on a debtor-by-debtor basis.

MR. MCCLAMMY: On Page 5, Your Honor, we've included a clarification in subsection (j), which just notes that timely filed claims that satisfy the requirement of the bankruptcy code, the bankruptcy rules and/or this order should not be disallowed solely by reason of a lack of

detail or specificity in response to questions asked in the forms approved by this order. And the reason for that was there was some concern, including raised by the UCC and the states, that their citizens wouldn't be able to -- or their constituents wouldn't be able to provide, you know, some of the detailed information because medical records may be difficult to obtain. For those that have lost loved ones, it would be difficult to, you know, say exactly which prescription medication it was or when, and we completely understand that.

We think that the detail is helpful in understanding what the legitimate claims are in these cases. And to the extent people are reasonably able to answer, we would ask that the Court approve the forms asking those questions. But we do understand, and think it would have been the case anyway, that the mere failure to provide that specificity is not going to be the basis for denying someone's claim.

THE COURT: Which is fine, although I think it's also appropriate, and I believe the forms do this, for the forms to state that you may be asked to provide more detail.

MR. MCCLAMMY: That's exactly right.

THE COURT: Which may be necessary before a claim is allowed.

MR. MCCLAMMY: That's exactly right, and the forms

do state that. And that would our intention if we ever needed to go down that route.

THE COURT: Okay. There's a change in Paragraph I just ahead of the paragraph we've been talking about, that says, "A claimant may also amend or supplement a claim after it is filed, including for the avoidance of doubt after the applicable bar date." I think you should add there, "But not to allege a new claim," because that's the distinction that courts make. You can supplement or amend, but you can't make a new claim after the bar date.

MR. MCCLAMMY: We will make that change, Your Honor.

THE COURT: Okay.

MR. MCCLAMMY: Your Honor, in Paragraph 5, there isn't any change noted in here. But we did note just this morning one thing that didn't carry over from some of the changes in the protective order. And the fact that some of the information that is on the personal injury claimants' form, some of that will be HIPAA protected information, some of it may not be, so we are going to include in here a provision that states that those forms will be treated as confidential as information protected pursuant to HIPAA. But also to the extent it's not protected by HIPAA, those forms will be treated as professionals' eyes only under the form of the protective order that will be entered.

THE COURT: Okay. And on that score -- and I know you're going to walk me through the forms themselves -- but it's not the forms that are key here because, as you said, there are many ways that the debtors will be contacting people, either directly or indirectly, six to eight hopefully touch points.

I think it's important in those, whether it's a press release or a story you're giving to the press or a summary, to make it clear that the PI claimants' forms are subject to the confidentiality provision, so that they -- you know, someone who sees a blurb on YouTube will understand that they're not -- that's going to be governing the process, as opposed to just in the form itself.

MR. MCCLAMMY: Will do, Your Honor.

THE COURT: Okay.

MR. MCCLAMMY: Your Honor, turning next to the inclusion of Paragraph 7.

THE COURT: Before we get to that --

MR. MCCLAMMY: Sure.

THE COURT: -- Prime Clerk is retained on two different -- under two different orders in this case. And in one of those forms of orders for certain of its tasks, it's acting as the claims agent for the Clerk of the Court, so it's really an agent for the Clerk. There are various provisions in here that either indemnify or exculpate Prime

Clerk. I think you should drop a footnote the first time you do that and say that whenever Prime Clerk is acting as an agent of the Clerk of the Court, such exculpation or indemnification will apply equally to the Clerk of the Court.

MR. MCCLAMMY: Will do, Your Honor.

THE COURT: I mean, the Clerk is separately protected by a number of separate presumptions and protections, but I don't want there to be an implication that somehow Prime Clerk is acting -- where Prime Clerk is acting as an agent of the Clerk of the Court, only its protected as opposed to the Clerk itself.

MR. MCCLAMMY: Understood, Your Honor. We'll make that change as well.

THE COURT: Okay. I think that -- I'm raising them now because I think the first time it comes up, although maybe I'm wrong, is --

MR. MCCLAMMY: -- is Paragraph 6?

THE COURT: Yeah.

MR. MCCLAMMY: I believe that's right.

THE COURT: Yeah.

MR. MCCLAMMY: So we will make that change.

THE COURT: Okay.

MR. MCCLAMMY: Your Honor, Paragraph 7, which starts on Page 6 and carries over to Page 8, I will try to

distill for Your Honor, rather than trying to read through all of the words on the page. The thing that is accomplished by Paragraph 7 is mostly for administrative convenience to allow certain of the ad hoc groups that know that they will potentially have large numbers of claims filings for their members, to allow their counsel to file consolidated proofs of claim form.

The claims forms themselves, once filed, will be treated still as though the individual members of these groups or those that have granted authority to the counsel or the agent to file the claim on their behalf will still be treated as though they are a claim for that individual. They'll still be using the form that applies to their particular group.

So, for example, the states approached us and said they would like the ability to perhaps file a consolidated claim on behalf of all of the states. And instead of having someone that is, you know, there kind of uploading the forms kind of like 50 times to say the same essential thing, we said for administrative convenience, we can agree to that.

The hospitals approached us similarly and said there's upwards of, you know, 400 or 500, you know, hospitals in our group; can we find some way to avoid having to do that? Similar for the multistate governmental entities group, which has over a thousand members. And then

also for the ad hoc committee, which includes those representing other contingent claimants beyond just the -- beyond just the states; cities, county municipalities, and tribes. They have the ability to also file a consolidated claim on those that have authorized them to do so.

We wanted to make clear, though, that this is not us saying that we believe that class proofs of claim can be filed in this case or that it would be appropriate to do so. And in each case, the member or the person whose claim is being filed will be known, and they will have given express authorization for the counsel or the agent to file that claim on their behalf on a consolidated basis.

THE COURT: So let me -- this is a long paragraph and it's an important one. I just want to make sure. In the middle of it, it permits the filing on behalf of consenting claimants of a consolidated claim. And then it says, "Using the appropriate opioid proof of claim form, comma, on behalf of each and every member of the applicable group or a subgroup thereof."

And I think what that means, but I just want to make sure it's clear, is, let's say -- just pick an example -- the hospital group, okay. Does this mean that there will be one filer, which is the ad hoc hospital group, but that attached to that consolidated form will be, you know, conceivably 450 separate attachments of the form, the

appropriate form that lays out their particular damages and why?

MR. MCCLAMMY: It would be something along those lines, or it would be one form for the group and it will have, for example, a spreadsheet attached to it that will provide answers to those questions.

THE COURT: Well, okay. The point I want to make sure because the key reason for this relief is for the debtors and the other parties-in-interest in the case to have a means to analyze who has what claims. And so, I'm perfectly fine with having a consolidated claim, so you don't have to have 450 filings, but that claim should attach specific information as to each claim within that consolidated claim, and I'm not sure that leaps out of this paragraph.

MR. MCCLAMMY: Okay.

THE COURT: The easiest way is to attach 450 individual claim forms. I guess you could say or, you know, a spreadsheet that contains that information for each claimant. Because otherwise, it's really not -- it's not -- you won't have anything more than what people are filing already as far as describing who they represent. And it's quite likely that hospital X in county Y will have different claims than, you know, hospital A in county B, and we need to know that. I'm not just singling out hospitals; this

would apply to all sorts of claimants, you know, so I think that needs to be made clear.

MR. MCCLAMMY: Absolutely, Your Honor.

THE COURT: This is fine to file as long as the -- either the form for each claimant is attached or the information is summarized in a way, maybe that you've checked with in advance to confirm is sufficiently particularly with the debtor.

MR. MCCLAMMY: We can work on that, Your Honor. I understand, and I think that's completely applicable as it applies to, you know, the hospitals and perhaps even others in the ad hoc groups. My understanding as to the states is they will file, or at least are considering filing a proof of claim form that may have an aggregate damages number across their forms.

THE COURT: Well, if they're prepared to take the same recovery. I mean, I just -- I'm not sure that works. I mean, I don't know. I mean, it may well be. I agree with you that the -- I think the preferred results here will be an agreed allocation among claimants and in all likelihood categories of claimants. But we don't know that for sure.

So one of the functions of a bar date is to give you the fallback if you can't reached an agreed. And if -- again, I'm just picking a state -- if West Virginia says it has claims worth X-hundred million and Massachusetts says we

have claims worth Y-hundred million, just having a form that says all the states have claims, you know, 50 times some number; it just doesn't -- you're not able to determine what the claims are.

I think they probably all have the same theories, so that I -- I mean, that can be taken off by what we just talk about, you know, or, you know, a spreadsheet. But I think as far as amount, you got to lay out your best shot at what you think it is because, otherwise, you won't be able to have that base.

MR. MCCLAMMY: Yes, Your Honor. I think we understand we have to work out that language with the states. But, yes, we're in complete agreement on that.

THE COURT: I mean, they're not going to have personal injury claims because states don't have personal injuries, so they don't have to fill out that form.

MR. MCCLAMMY: Exactly.

THE COURT: But they would have to, I think, in a consolidated -- it's not like an indenture trustee's claim. I mean, there, it's based on one document and you have that claim so the bondholders don't have to file individual claims. The theories here may well be the same, although you may need to have them run it by your first so you're comfortable that that's okay, as you talked about earlier.

MR. MCCLAMMY: Exactly.

THE COURT: You don't file the individual claim for them. But I think as far as amount is concerned, you know, I don't see how we could get away with not having that stated.

MR. MCCLAMMY: Understood, Your Honor.

THE COURT: There may be an unliquidated amount. I don't know, but I think you need to know.

MR. MCCLAMMY: Thank you, Your Honor.

THE COURT: Does anyone have anything to say on that?

MR. TROOP: Your Honor, if I may.

THE COURT: Sure.

MR. TROOP: Your Honor, there are certain kinds of claims that transcend the boundaries of the states, and that the allocation of those claims as amongst the states may or may not be driven by specific facts with respect to that specific state in the way that you are thinking about assessing the claim.

And so, one of the things that we were trying to do was to not have a fight over whether to have a bar date at all now in light of the cost and expense, not only to the estate, but to each claimant in putting together an individualized claim that -- you know, pick Oklahoma, Your Honor. I forget how long that trial went and how many pages of documents and how much went in, but it was a really huge

effort. But also to provide the ability for reasonable and rational amounts for common claims.

THE COURT: Well, on that score --

MR. TROOP: And if there are differences, Your Honor, we'll work our way through. But --

THE COURT: Can I just interrupt you on that point?

MR. TROOP: You wear the robe, Your Honor.

THE COURT: On common claims, if you say we have a common claim, that fixes the nature of that claim. You know, I don't have any problem with that. And if you say we have an unliquidated claim because we can't liquidate now, I guess I don't have a problem with that. I mean, that's subject to the objection process and the like.

But where you know you have a specific claim that's not necessarily a common claim, I think you need to flag that because you said it may or may not.

MR. TROOP: And we're thinking about it that way, Your Honor. I just wanted to be very clear about the limitations, the issues.

THE COURT: That's fine. It's a good point, but it's all funneled through the claim process. So if the states agree they have certain common claims and that claim is going to be the same for Rhode Island as it is for Texas, then you could say that and that's fine. That's what, you

know, that's what it is.

MR. TROOP: And we were also trying to think of ways, Your Honor, to minimize the likelihood that you would get 50 claim forms and at the bottom simply said unliquidated, right?

THE COURT: Well --

MR. TROOP: So those are --

THE COURT: But I think there is some -- I mean, if you actually can give -- I mean, I don't -- it would seem to me to be helpful to give a rough estimate at least of what you think is at stake here because it's going to play into the negotiations.

MR. TROOP: And, Your Honor, I think it will play into the negotiations regardless of whether a proof of claim form is filed or not.

THE COURT: Well, I don't know.

MR. TROOP: But that --

THE COURT: I think filing a proof of claim is an important event in a case. And, you know, the other folks who are going to be arguing that they should get specific recoveries, whatever -- you know, a hospital. I was told that basically the hospitals claims are basically a hundred percent of a year's GNP in the U.S. a few hearings ago, for example. So, you know --

MR. TROOP: Our claims are bigger than that, Your

Honor.

THE COURT: They may want to see what yours say. I mean, I -- so I appreciate that at some level, this is just a first step. But I don't want it to be completely meaningless, so I think there should be some level of detail in it.

MR. TROOP: And, Your Honor, all I'm trying to alert the Court to is that these are issues that we all considered in the process, including whether to make a big deal about having a bar date now or not.

THE COURT: Right.

MR. TROOP: Before we know what this case is going to look like at the end where this work may actually turn out to be less helpful than more helpful at significant expense.

THE COURT: Okay.

MR. TROOP: So, Your Honor, I'm saying we've made that balance. I'm not arguing that point.

THE COURT: Right.

MR. TROOP: This was an integral part of that balance, consistent with I think my articulation of our understanding of what a consolidated claim could look like.

THE COURT: Okay.

MR. TROOP: Which was slightly different than, though I don't think intentionally so, than the colloquy

that was going back and forth.

THE COURT: Well, there are different entities covered by this paragraph, which is one of the reasons I wanted to discuss it. States, largely by definition, cover everyone within the state, to the extent that states have that ability to do that.

MR. TROOP: Right.

THE COURT: And the hos- -- you know, the hospitals or the NAS babies, that's different; those are individual claimants. This paragraph covers both. So I think -- I just want -- as far as entities other than the states are concerned, I think what we said before goes. As far as the states are concerned, I suppose the language we talked about or a summary, as opposed to an individual form, you know, reasonably acceptable to the debtors may be sufficient. Because I think you all know, as I think I do, what is going to be elicited here.

But I didn't want just something that said we have a claim and leave it at that. I think you need to have something more than that.

MR. TROOP: We understand, Your Honor. And, look, I'm not -- I have no more of an idea of where this case will end up than anyone else does in the courtroom right now. But I think that it's relatively well-known that in connection with the litigation involving opioids around the

country right now, states are constantly working on their own allocation, looking at recoveries in the hall in and out of these.

THE COURT: Well, and as far as a bar date is concerned in this case. To me, it's probably more meaningful that it would come to the states, as opposed to the other claimants, individual claimants that can file a group claim, although not a class claim under this provision.

To know that states' theories of liability, as opposed to amounts, because their ultimate argument is going to be, under these theories, we're really covering everybody, and then we will have a negotiation both among yourselves and the people that say no you're not.

So the theories, as far as the states' consolidated claim is concerned, are really important. And if you have a difference in theory between Maryland and Rhode Island, say, that should be flagged. If everyone has the same theory, then that's easy. So maybe that's -- to me, that's the -- as far as the summary is concerned, that's more important as far as the states are concerned than specific amounts.

MR. TROOP: Understood, Your Honor. Thank you very much for your time. And as long as I'm here and because I can't help myself, earlier you suggested some

language that said you can file a claim after the bar date, but not a new claim.

THE COURT: You can amend the claim, a supplement, yeah.

MR. TROOP: Amend, but not a new claim. Just something popped in my head, which is I think you mean without leave of court, right?

THE COURT: Yeah, sure.

MR. TROOP: If someone came to you and said -- right, that's all.

THE COURT: But this order authorizes it so it gives you leave of court.

MR. TROOP: Yeah. Understood, Your Honor. I was just making sure I understood that.

THE COURT: Okay.

MR. TROOP: Thanks.

MR. ECKSTEIN: Your Honor, good morning. Kenneth Eckstein of Kramer Levin on behalf of the ad hoc committee.

THE COURT: Good morning.

MR. ECKSTEIN: Let me just supplement a few comments that Mr. Troop made in the colloquy. I think generally, I'm comfortable with the direction, but I think a little clarification may be useful. The goal was, and as Mr. Troop said, I think the feeling we all had in the case was to try to work with the idea of a bar date because you

don't know ultimately where the case comes out. And I think at the end of the day, the feeling is it is useful to have the bar date in place.

And ideally, the plan is to work through an RSA and a plan in advance of the bar date and, hopefully, that will provide a framework for an agreed-upon allocation, which should make the bar date, I don't think irrelevant, but much less necessary and the allocation should ultimately supersede. If we don't get to an allocation, an agreed-upon allocation, then obviously the bar date data will become more important and we'll have to figure out mechanisms to work through claim allowance allocation and the Court, you know, overseeing proceeding.

That said, we're hoping to make the bar date process as smooth as possible. And I think the concept, at least for the governmental entities was as to the states, there is a reservation for the states to file essentially a collective claim. As Mr. Troop said, a lot of work has been done by the states, not just in this case but more broadly over a long period of time.

And I think that, to the extent an aggregate claim is filed, it will reflect both consensus on the theories -- and I would certainly expect that the theories for the claims will be set forth in the aggregate claim -- but it will reflect essentially, at least among the states, a

collective view on how the states would allocate amongst themselves. I think we all recognize that the claims that are asserted are going to exceed whatever the ultimate assets are that are going to be the basis for the plan by many, many, many multiples and so, allocation is really quite important.

And so, at least as far as the governmental entities are concerned on the state side, the hope is that there will, in fact, be -- and I think there essentially is already -- an agreement among the states as to how they would allocate so that you eliminate that fight.

The other issue that we've anticipated that is a little different from Mr. Troop's consideration, is we have both states and non-state governmental entities on our ad hoc committee. And even if there is a consensus among the states as to how each of the states would allocate, Your Honor could appreciate there are issues between the states and the non-states as to how the municipalities within each state will essentially participate in the distributions that will come out from the plan in respect to both damages and, probably more importantly, the abatement side of the plan process, how we're going to actually address the -- cure the problem going forward.

Similarly, we also have on our committee a representative of the Indian tribes, and we have a separate

issue similar to the municipalities as to how you would provide within the governmental entities for the Indian tribes. So I'm hoping that the claim forms, while it's not certain, will either be done in the aggregate or individually; and if there is not consensus, then the individual -- then the states will file individual claims.

But I think it's in the interest of the estate, to the extent there is the more consensus that the governmental entities have, the -- I think the better -- the more advanced the case will be. And I think having the flexibility to file the claims for each of these groups in some aggregate sense is useful because it will streamline.

It doesn't eliminate the need to ultimately reach an agreement between the governmental entities and the private claimants on exactly how we will allocate between those two larger quadrants, and that obviously is maybe the most challenging part of the allocation issue in the case, although I don't want to minimize the importance of dealing with the allocation on the state and the municipality and for our side as well.

So we've tried to take all these issues into account in the claim forms. And I think that it certainly makes sense to articulate theories; it certainly makes sense to articulate, as best as possible -- and I think best as possible is important -- the amounts of the claims, and to

try to give as much specificity as we can so that the claims actually will have value if they're needed. That's been the approach.

And I'm hoping -- it may make sense in that Paragraph 8 to separate out the governmental entities and tribes from the private claimants so that there's less complication, and maybe we can work with the debtor and the creditors' committee to make sure that this form picks up these theories, and at the same time it works.

THE COURT: Right. I think that makes sense. I mean, as far as the first point you made, when someone files a proof of claim, it's their claim. So if they want to limit it in a specific way through an allocation, that's fine. I just didn't want there to be an implication that you could do that and then change your mind in this paragraph.

MR. ECKSTEIN: I appreciate that point, Your Honor.

THE COURT: So if the group, whatever it is, can agree on that and agree what the claim will be among themselves and as far as the estate is concerned, that's fine. That's just like saying I'll limit my claim to $100,000. On the other hand, I don't want this paragraph to imply that, well, you can change your mind later and say, well, actually my claim is not $100,000, it's 150,000 or

whatever, you know, whatever the difference is.

MR. ECKSTEIN: I understand that, and I think we'll make sure that each of the government entities understand that point as well.

THE COURT: Okay.

MR. ECKSTEIN: Thank you, Your Honor.

THE COURT: Okay. You have someone behind you.

MS. MANOUKIAN: Your Honor, Kristine Manoukian, Schulte Roth & Zabel on behalf of the ad hoc group of hospitals. Just very briefly to comment on the comments that were made in the beginning. I think the idea, at least our idea, behind the inclusion of this language and then working through it with the Debtors was that there would be, as Mr. Eckstein suggested, there'd be one aggregate claim that would be filed by the 550 plus hospitals, in terms of the proof of claim form by the hospitals in our group.

I think what we were envisioning is we would have some sort of an attachment spreadsheet that identified all of those hospitals. They all largely have the common theories, as you noted, and so that would be described in the addendum. But then there'd be a spreadsheet that to the extent the hospitals want to break out their separate amounts of claims, they will do so in that spreadsheet.

THE COURT: They can't not break it out. They have to break it out.

MS. MANOUKIAN: Understood, Your Honor. But the idea would be there to be one, you know, single consolidated claim that would have the aggregate amount.

THE COURT: If the spreadsheet in essence gives the debtors the same type of information that individual claim forms would, that's fine.

MS. MANOUKIAN: Understood, Your Honor. Thanks.

THE COURT: And, you know, this is not just for claims' purposes. If there are five hospitals in Texas, for example, an allocation may well have a second step, which is, you know, so much money will go to the State of Texas and then the State of Texas will look at the claimants within the State of Texas and they can use these proofs of claim forms to say, all right, under the plan, this is how that money will be allocated. So there's a real use to this in particularizing it when you go to individual claimants.

THE COURT: Understood, Your Honor. Thank you.

THE COURT: All right.

MR. MCCLAMMY: Thank you, Your Honor.

THE COURT: Okay. This was by far the biggest set of questions I had, so I think the rest of this may be a little easier.

MR. MCCLAMMY: I have a sense that that paragraph might be the one.

THE COURT: Okay.

MR. MCCLAMMY: I think with that we'll be able to work through with the comments from Your Honor on the record and any other statements from counsel, the language that will need to be included to revise there.

THE COURT: Okay.

MR. MCCLAMMY: Your Honor, Paragraph 8 of the order was revised to address some questions that had been raised by the Department of Justice with respect to the claim that may be filed by the federal government. They were concerned that certain questions that appeared on even the general opioid claim form, as opposed to the government entity claim form, didn't necessarily apply to the federal government and all of its agencies, including potentially, you know, with the regulatory agencies and others that may have claims.

So they still intend to file a claim or claims that will set out their theories for recovery, just as anyone else would, but would like to use the more standard form, which is titled here, the non-opioid claim form for purposes of this specific case. But for the government, for the federal government, we did want to make it clear that just because they're using a claim form that may be labeled non-opioid claim form, to the extent that they have claims tied to the opioid crisis that they believe Purdue was responsible for, they can set those out on that claim form

as well.

THE COURT: That's fine.

MR. MCCLAMMY: And, Your Honor, I did want to just note for the record, and counsel for the government did ask us to state, that nothing in the U.S. government's, you know, negotiation of the terms of the order or their eventual filing of the proof of claim shall determine the ultimate treatment of that claim or any such claims as well.

THE COURT: Of course, that applies to everybody.

MR. MCCLAMMY: And I thought that made sense and was easy to do. Thank you, Your Honor.

THE COURT: Okay.

MR. MCCLAMMY: Your Honor, I believe the next substantive change is at Paragraph 13, subsection (j).

THE COURT: Right.

MR. MCCLAMMY: And this Your Honor may have noticed in our original filing the exclusion from the need to file a proof of claim with respect to indemnification or contribution claims was limited to just former -- current or former employees of the debtors. At the time, we were in negotiations with the UCC seeking to have that extended to the current or former officers and directors of the debtors, and have since been able to reach agreement; that, to the extent the current or former officer has not actually been named in any of the pending litigation, that they have no

need to file a proof of claim here.

THE COURT: Okay.

MR. MCCLAMMY: The next substantive change, I believe, is in Paragraph 16, Pages 12 to 13 of the blackline.

THE COURT: Right.

MR. MCCLAMMY: And this is consistent with what I've talked about earlier, Your Honor, which is we've had a number of conversations leading into this process, both about the substance of the order, but also about how the notice program is going to be conducted going forward. And the creditors committee would like to continue to have that input kind of going forward and wanted to memorialize that here in the terms of this order.

So we've included language here that will require Prime Clerk to provide weekly reports to the debtors and the creditors committee regarding the supplemental program which outlines, you know, where we are placing media, our plans for going forward, to the extent that, you know, people are going to websites, getting the numbers of people that are visiting sites or seeing the social media posts and things of that nature, so that people can, on a regular and real time basis, have a sense of, you know, what's working and not working.

Prime Clerk had already been, you know, planning

that as part of their process. They will monitor it, you know, minute by minute, day by day. So to the extent they see that something is trending, they will be able to adjust; to the extent that they see that something is not, they'll be able to adjust and move some of, you know, the resources that way, so we were happy to do that.

THE COURT: Okay. I mean, I think this is fine that they'll be providing weekly reports, which implicit in that is that they'll be monitoring. I think you and the committee were wise not to spell out what happens after that. I mean, it's really I think very fact driven.

MR. MCCLAMMY: I think that's exactly right, Your Honor.

THE COURT: And, you know, if it appears there's a problem or just disagreement over how to allocate the resources that they can't be resolved, I guess it comes back to me, but hopefully it's something that can be adjusted as you're going on.

MR. MCCLAMMY: I think that's right. And in connection with our agreements with the committee, I did want to just state for the record, Your Honor, that debtors and Prime Clerk are committed to working constructively and collaboratively with the creditors' committee, you know, on the supplemental notice plan. And we will, of course, regularly consult with and seek input from the creditors'

committee and its advisors on substantially all matters that are related to that notice program, including among other things, the implementation of that plan, the scripts that we'll be using for the radio and the TV ads, the rollout schedules and the placement of notices.

We'll also make ourselves reasonably available to answer questions from the creditors' committee throughout this process. And in addition, you know, the debtors and Prime Clerk will keep the creditors' committee, you know, reasonably informed about the progress of the notice program as we've outlined here in the bar date order.

And I also did want to note for the record, and consistent with the committee's statement that they filed earlier this week. The debtors have agreed to engage, for a reasonable fee, a PR and/or media consultants that will be working directly with Prime Clerk at the request of the creditors' committee to assist with that supplemental notice plan.

It's all subsumed within the budget that we've already presented in Miss Finegan's declaration. And we believe that, you know, the expertise that this individual brings to the table and the discussions that we've had with that individual already have proven very constructive and will only help the process kind of going forward.

THE COURT: Okay.

MR. MCCLAMMY: The last thing of substance, Your Honor, I believe is Paragraph 19. The language that we included here was designed to really allow the debtors some flexibility in reaching out to get to everyone that we think has the potential for filing a claim. It's going to require us to make statements, you know, on the radio, you know, if you think you may have a claim.

And we don't want any of those suggestions to be taken as an admission of liability at this stage in these cases or as to the validity of any particular claim or type of claimant or class of claimant that we may be reaching out to. So we've included this provision in here for the avoidance of any doubt.

THE COURT: That's fine.

MR. MCCLAMMY: Unless Your Honor has any further questions on the order, I can turn to a couple of things in the proofs of claim forms.

THE COURT: No. Why don't we turn to the forms.

MR. MCCLAMMY: So, Your Honor, as a result of some of the negotiations between the parties, we've made a few changes to the proofs of claim form. But as a general matter --

THE COURT: But those are in my --

MR. MCCLAMMY: Those are all in your binder.

THE COURT: They're in my binder.

MR. MCCLAMMY: I don't think any of them change anything substantively. A lot of it was --

THE COURT: Yeah, no. I really didn't -- I mean, I think these changes are consistent with the order. I didn't really see anything that created an issue, with one exception. The form itself doesn't reference, as far as I can see, the confidentiality provisions of the order.

MR. MCCLAMMY: We did for the personal injury claimant form.

THE COURT: Where is that, because I went through it a couple of times, I couldn't find it. There's an instruction in the instructions not to give personally identifying information, but I didn't see anything in the form itself.

MR. MCCLAMMY: Yes. It's in the -- and if we need to, if Your Honor has missed it, maybe we need to put that in bold so that others see it as well.

THE COURT: But where is it?

MR. MCCLAMMY: But if you're in the -- right under the part that has the website link, and it says read these instructions, read the instructions at the end of this document.

THE COURT: Please read these instructions.

MR. MCCLAMMY: The fifth paragraph down.

THE COURT: You mean the one that says you must

leave that or redact?

MR. MCCLAMMY: It says personal injury claimant proof of claim forms, any supporting documentation submitted with the form shall remain confidential and shall not be made available to the public.

THE COURT: I'm sorry. Where is that?

MR. MCCLAMMY: In the fifth paragraph down. I'm looking at Page 41 of 68 in the exhibits for the personal injury claimant proof of form.

THE COURT: I was looking at the wrong form.

MR. MCCLAMMY: Proof of claim form, the blackline version. It's right on top of the bolded paragraph that says fill in the information about the claim as of September 15, 2019, the petition date.

THE COURT: So just underline highly confidential.

MR. MCCLAMMY: Will do.

THE COURT: Okay, that's fine.

MR. MCCLAMMY: Okay. We will make that change then, Your Honor.

THE COURT: Okay.

MR. MCCLAMMY: Unless Your Honor has any further questions for --

THE COURT: Well, I had a few other points. First, this is obviously expensive.

MR. MCCLAMMY: It is, Your Honor.

THE COURT: It's $23 plus million dollars estimated. But I agree with all the parties, including those who thought about it and had reservations about it, which I did to some extent too, that you really -- it would be highly unusual not to have a bar date in a case, you know, under the bankruptcy code even where you could make the argument that there is a set of claimants who would cover everybody.

Secondly, I believe there are, separate and apart from having a bar date so that people who miss it are out of luck on individual claims, it's important to get individual claims so that one can negotiate a plan and a distribution mechanism.

That being said, this is a, for want of a better word, a public health case. Are you -- are you getting, like, special rates or free treatment from the media on this? I mean, I don't see why not? I mean, you know, they make public service announcements all the time. I would think that there should be some break here on this.

MR. MCCLAMMY: I think Your Honor's statements on that --

THE COURT: Starting with the "Wall Street Journal" and the "New York Times," you know.

MR. MCCLAMMY: I think Your Honor's statements on that can only help in that regard. But, yes, we are -- we

are looking at every possible opportunity to make sure we are managing the costs, and Prime Clerk has been on top of that and I'm sure we will take that --

THE COURT: Okay. And maybe the states could be helpful there. I mean, I'm not saying to strongarm people, but just to make the point that this really is a public service type of announcement.

The second point is tied into one of the rationales here for having a bar date, which is perhaps more important in this case than some other cases, which is to know, you know, who individuals are who say they have a material claim.

A big part of this program is not the form itself; it's stories in the media, which obviously create far more attention than, you know, a placement of an ad on one page in a newspaper. It's summaries put online. I think it's important in each of those -- and we don't have copies of those; I'm leaving that up to your discretion as monitored by the committee and others to get right -- that it be clear that this is not an invitation to people who generally have claims because of opioids. People should understand, this is claims against these debtors.

Now, it may be that that's a lot of people, but it's not an invitation just for anyone who has an opioid problem but has never taken any product by these debtors to

file a claim. It's not that type of public health issue. It is centered on these debtors. And I fully agree with what you've agreed to with the committee and others that it may be that people don't have their prescription information.

But I think it needs to be made clear when you make a press release, when you provide a canned story to the media, when you do a summary that the focus here is on claims against these debtors, not just a general feeling that the opioid crisis has hurt me somehow, because that's not helpful. It's not what a proof of claim should be; that's too tactical an explanation. It's not helpful to the process; it's a total waste of everyone's time and shouldn't be done.

So I don't know if you were considering that for your press releases and canned stories and whatever you call them, banners for YouTube, but that's important; these particular debtors, not the opioid crisis generally.

MR. MCCLAMMY: Absolutely, Your Honor, understood. That has been part of our considerations and part of how we're working with the creditors' committee to get that message out in the right way, things that can get peoples' attention.

THE COURT: Right.

MR. MCCLAMMY: And to understand perhaps who

exactly Purdue and the Purdue debtors are so they can make some of those determinations as to whether they have a claim.

THE COURT: Okay. And then my last point is, and I think this is a very important thing you're doing. You are reaching out to prescribers.

MR. MCCLAMMY: Yes, Your Honor.

THE COURT: And obviously, that's the point of contact for, I would think, other than NAS babies, people who really do have individual claims for being harmed by the debtors' products. They will -- their doct- -- you know, they have -- I believe they have an absolute obligation to notify people; nevertheless, human nature being what it is, they may be reluctant to doing so. Is their confidentiality protected through the claim form? I mean, are they -- are you going to tell them anything other than just, you know, here's the notice?

MR. MCCLAMMY: For the prescribers?

THE COURT: Yeah.

MR. MCCLAMMY: We're working on developing something that could go in there so that they can pass that information on as well and not just be, here's the standard, you know, notice of claim form.

THE COURT: I mean, they may -- I mean, again, I think everyone's hope is that there would be an agreed

allocation. I mean, conceivably if you're objecting to a claim, they might be a witness because they will say, yeah, I prescribed X whatever to somebody. So it's not complete confidentiality, but I just -- I don't know if thoughts been given to how to encourage these people. And maybe, maybe you don't encourage them other than to say, you know, you really as a professional have a duty to notify.

MR. MCCLAMMY: Exactly.

THE COURT: Maybe that's it, right? I just want to make sure that you and the committee have been thinking about --

MR. MCCLAMMY: Absolutely.

THE COURT: -- how to encourage them to do it in the right way.

MR. MCCLAMMY: Absolutely.

THE COURT: All right. Does anyone have anything further to say on the bar date motion?

MR. BICKFORD: Good morning, Your Honor. I'm Scott Bickford. I'm from New Orleans, where actually we have a lot of Saints. None in the Super Bowl.

So, Your Honor, I'm here on behalf of the -- I'll say NAS children, because -- and I'm here with Scott Markowitz, who is representing the Committee as well.

The -- I say NAS children, because as the Court is aware from previous filings, there are some 500,000 of these

kids out there, many of which don't have a statute of limitation running against them because they are minors, who have been born since 2000 and who may have potential claims in this case. A third of those children have profound disabilities in terms of learning, developmental, and some teratogenic issues as well. However, the Court does -- and I want to address something very quickly that the Court brought up, is this idea of giving information to prescribers to pass on to potential mothers who had NAS children. There involves issues of the doctor's own liability, whether the doctors are in fact witnesses, whether they will pass the information along. And I think even the Debtor recognizes that this type of notice is a pretty precarious way to notice the children.

You know, we have had a number of discussions with the UCC, with the Debtors, with the hospitals, with the noticing consultant, and other claimants in this case. And I think that one of the biggest concerns that we have is this whole idea of confidentiality. Because if we're looking at birth mothers -- okay? So in the NAS world we have birth mothers, we have foster parents, we have adoptive parents, we have grandmothers and grandfathers, we have aunts and uncles and other distant relatives. We have a population of children that has been moved, is mobile, is disparate. And we're trying to reach all those kids.

But with regard to a birth mother -- and this has already been raised when we've been talking about the ERF issues. This has all been raised by people on the UCC committee and other people, that mothers won't come forward either because they perceive, rightly or wrongly, that a state is going to take their child away if in fact they are still addicted to opiates and caring for the child, or that because they were addicted to opiates at the time the child was born dependent on opiates, that in fact that child would, again, be taken by social services. They are concerned that social services will in fact subpoena records and that various states' attorney generals will come after and subpoena records from whatever institution is in fact collecting data and information on this.

Now, understanding that the person that is the recipient of this is the child, who is innocent. But because we interpose a guardian with the child, there becomes a problem that the guardian, fearing for their own self or fearing that their child is going to be taken away from them, creates a great impediment on confidentiality. And this is a very big issue going forward with regard to the notice, which is why we're reserving our rights regarding this, to see how many actually apply. And I don't know how we can test how many birth mothers are going to be reluctant to file claims on behalf of their children. There

becomes further complications of course down the line, which we haven't even gotten to, is if --

THE COURT: Again, the form, as far as they're concerned, is confidential. I was focusing on the prescribers. I mean, it is confidential as far as the claimant is concerned, which would include the guardian or the mother that's filing the claim for her child.

MR. BICKFORD: Okay. Well, in that regard, I really think that it ought to be then stamped confidential in terms of the proof of claim in big, bold letters.

THE COURT: Well, it is confidential.

MR. BICKFORD: Understood that. But I'm just telling you that there is a great perception out there of birth mothers, very fearful of the --

THE COURT: Well, again, I mean, the forms say what they say, and I'm comfortable having underlined it now, that they're clear. The order says what it says. As far as the PR campaign, you know, that can be made clear as well as the -- I think I said it would be made clear. That was my first point in today's hearing, that when you do the summary of the notice and the banners for YouTube and the like, the fact that the form is confidential is one of the things that's highlighted, to be highlighted, as well as that this is a claim against the data. You have to show that it's against the data as opposed to just generally because of the

opioid crisis.

So I don't think that's -- I mean, I don't know what more we could say on that at this point.

MR. BICKFORD: Right. I only raise it because this is one of the reasons, the principal reasons we're reserving rights in this case, to see how -- in fact if --

THE COURT: That's fine. But again, that's just a reservation. We have to see the facts and who is responsible for what and the like. But that's fine. I understand that. But your input on how to deal with the prescribers is useful. You don't need to go through it now, but I think it raised an issue in my mind. I mean, maybe they're just damned if they do and damned if they don't, because they do have professional responsibilities. But I would like to encourage them to reach out to people.

MR. BICKFORD: Yeah. And the fact of the matter is even if you reach a prescriber and even if that prescriber is willing to send out notices to a former birth mother, the former birth mother may not actually in a lot of cases even have custody or control of the child. So that's --

THE COURT: Well, okay. That's fair. Okay.

MR. BICKFORD: And with regard -- we would just thank the Court for allowing perhaps us to file one claim with spreadsheets with all the information that is required

on the proof of claim form on behalf of multiple children in this case to save time and money.

THE COURT: As long as each claimant's claim is sufficiently particularized, whether it's on a form or a spreadsheet, is fine with me.

MR. BICKFORD: Okay. Thank you.

THE COURT: Okay.

You can stay there if you want. You don't have to --

MR. PREIS: I can't see, but -- Your Honor, I know there are other items on the agenda that we need to get to, so I'll be brief. But I did want to make sure I said just a few things. For the record, Your Honor, Arik Preis from Akin Gump on behalf of the Creditor's Committee.

The Debtors did a nice job of explaining the process, how we got here. They also correctly read into the record the agreement we have about our participation going forward. Just four things I want to mention. And, again, I'll try to be brief.

First, why we've taken such a large interest here, something that hasn't been touched on today. Second, the discussion around the actual forms themselves. Third is the deadline to file the proofs of claims, and then fourth, the supplemental notice program.

On the first point, why we've taken such a large

interest. Putting aside I think what everyone recognizes, which is we need to make sure we give everyone the chance and the notice to file a proof of claim if they believe they have a claim against the Debtors. And it's been my own personal experience from talking to people involved, talking to individuals, and many people believe that there is some sort of settlement that is already kind of baked and done in this case that gives all the money to the states. And therefore, there are a lot of individuals out there who may be thinking to themselves there's no reason for me to file a proof of claim, because I'm not going to see anything. That's one of the main reasons we've been so involved in making sure that not just the proof of claim forms are easy to fill out, but the supplemental notice program that I'm going to get to in a second.

The second thing was on the proof of claim forms themselves. I do want to -- I think Mr. McClammy has done an unbelievable job putting together everyone's comments. The purpose of most of the comments were twofold. One, to get rid of a lot of the questions, but secondly, to make them really easy. And I think that's been accomplished. We won't know until the bar date if it actually worked. But as of right now I think everyone sitting in the room thinks that they're fair.

The third thing, the deadline to file proofs of

claim. Again, we think the choice of the bar date makes sense. But as we've put in our statement, we don't know. And we'll see how this goes. And we may be back here, as you said, in a few months saying, okay, have we done it this way or this way, now we've learned from our mistakes, we may need another month. We don't want to repeat --

THE COURT: Well, hopefully that won't happen. Mullane on down doesn't require perfection. So --

MR. PREIS: Right.

THE COURT: But I understand your point.

MR. PREIS: But we've seen what happened in PG&E, and I think that was referenced in a number --

THE COURT: Well, those were specific people though. I think -- anyway, enough said on that.

MR. PREIS: Okay. On the fourth thing, on the supplemental notice program. Again, it's impossible to know if $23 million, or $20 million, or whatever it is, is going to be the right number. But I think part of this has been, well, we want to make sure we do everything we can. And so one thing that Mr. McClammy hit on is all the different places that all the messages are going to be. And I think he said the idea is to target each individual six to eight times. But we've also been equally focused on what the message is. And that's one of the reasons we urged the Debtors to hire a consultant, why we also have been focus on

the scripts for TV commercials, why we've been focused on perhaps who the spokesperson would be.

Your point about hoping someone would do this for free, you know, public service messages. One of the great things about earned media is that it is for free. And so we've been trying to, you know, talk to earned media. Again, one of the great things about the consultant that the Debtors have agreed to bring on. So, again, we don't know if it's a perfect process, but it's as good as we've been able to come up with.

So, again, I just want to thank again the Debtors for everything they've done. And hopefully we're not going to be back here asking you for relief at some point in the future. But this is kind of uncharted territory for I think everyone in the room. Thank you, Your Honor.

THE COURT: Apropos your first point and your earned media point. This has been a theme that I raised in the first hearing in this case, and it's worth repeating.

Even if there ultimately is an allocation here -- and there's not a deal now, obviously, at this point on a plan. But if there is an allocation that leaves a substantial amount of the Debtor's value to the states and territories, one of the primary benefits of a bankruptcy case is that the plan can lock in, perhaps only in general ways, but perhaps more in specific ways, how the states use

that money so that people will know that it's not going to be used five years from now when these attorneys general have moved on to something else, these attorneys general being highly motivated to deal with the opioid crisis. But five years from now maybe they won't. And maybe the state will just say, all right, I want to apply it to taxes. Well, a plan can require how it's to be used. And the bar date where individual claimants say they've been hurt can guide the states through a plan on how to use the money. And that's really important.

So if you could get that message out to the press so they understand that, you know, if a plan here ultimately results in the states getting a lot of value and it's not just for general purposes to alleviate, you know, a subway deficit, all to the good.

MR. PREIS: I appreciate that, you know. And we'll make sure that when the Debtors are talking to media, we'll make that point. I'm going to take for the fact that you said if the states get most of the money.

THE COURT: Sure.

MR. PREIS: We haven't --

THE COURT: I understand. But as far as filling out proofs of claims are concerned, it's an important step no matter who gets the money.

MR. PREIS: Thank you, Your Honor.

THE COURT: Okay. So I will grant the Debtor's motion to set a bar date. I think we do need to change the order, as we've discussed, with regard to the consolidated claim provision and a couple other minor changes. My directions from the bench about what should be in summaries and press releases and the like, they don't have to be -- that's just part of reference to the record of the hearing. You don't have to add that to the order.

MR. MCCLAMMY: Right, Your Honor.

THE COURT: Okay?

MR. MCCLAMMY: We will make those changes and get that resubmitted to chambers.

THE COURT: Great. And since we're talking about June 30th, it's not something you have to do by Monday, but I would like to have it by the end of next week.

MR. MCCLAMMY: We will try to get it as quickly as possible. We have a deadline obviously to start everything, those 21 days from the date that the order is entered. But rest assured, we will not be waiting. The processes that need to be put in place for all of this to start and get underway have already been well in the works and will continue unabated.

THE COURT: Okay.

MR. MCCLAMMY: Thank you, Your Honor.

MR. HUEBNER: Your Honor, that brings us to the

next item on the agenda, which is what I call the limited continuation to hopefully finish up our wages motion. We have I think one half of one issue left to be resolved.

So, Your Honor, I am frankly surprised and saddened to find myself up here. It was certainly not for lack of trying on any number of occasions between the December 4th hearing and today to put this issue behind us. And it just was not possible.

So, Your Honor, to quickly set the stage, what we're here seeking approval for is the very last element of our 2019 incentive-related programs and other related items that were adjourned several times from earlier hearings until December 4th. What is left is the Court's consideration of a deeply concessionary settlement reached with the UCC after weeks of negotiation of the 2019 incentive compensation for the Debtor's CEO. The sole objectors in the case are the dissenting states, including Pennsylvania, which tucked itself in underneath the most recent filing, and they are one of the dissenting states.

That's a very brief recap, Your Honor. Prior to the December 4th hearing when this was settled with the UCC, Dr. Landau, as part of a complex agreement reached with the UCC covering all employees, had agreed to cuts and changes far deeper than those covering any other employee of Purdue.

Four fundamental provisions that I'll cover very

quickly. One, a clawback provision with language that was thereafter agreed to by all parties, including the objectors, used in the December 9th order that preserves the rights to seek discouragement of the AIP amounts, that Dr. Landau has found either to have knowingly participated in criminal conduct or even failed to report fraudulent or criminal conduct of others. We took the Court's direction (indiscernible) and Insys. We actually I think even bolted up more from that there, and with that received agreement as to everyone else.

Two, an anti-secretion provision applicable to no other employee, and only to Dr. Landau, that he agreed to in advance of the prior hearing that prohibits him from taking any action as a material effect of frustrating enforcement of any potential judgement with respect to the IP payments.

Three, the latest payment terms of any employee. As Your Honor may remember, this is normally paid in March of the next year, as annual plans often are. Dr. Landau agreed to take 50 percent only on June 1st and the next 50 percent on September 1st, taking this greatly-reduced amount and de facto turning it into a 2020 retention plan kind of for free for the Debtor's perspective.

And then four, the numbers matter, as we'll be talking about quite a bit I think in the next while. A 63 percent reduction in his 2019 incentive compensation.

Actually, I believe Dr. Landau alone took the brunt of almost 25 percent of the $10 million in overall savings that the deal with the UCC reflected.

Quite frankly, it's really very unfortunate to be up here given that we've ben talking about this stuff since September and that we have bent over backwards multiple times to reach peace, especially on what in the grand scheme of things, while material from a compensation perspective, is not really material from the Debtor's perspective.

Even more so, Your Honor, because after the hearing in addition to providing copious information to the dissenting states, itself a lot of process and a lot of interaction, Dr. Landau made one more very material concession that was in addition to all of the UCC concessions, which is that the latter half of the $6 million we'll be talking about in a few minutes that Dr. Landau got in March 2018 that was to vest in 37 days on March 1st, Dr. Landau agreed to extend the vesting date of that by ten months, to December 31, 2020. This actually has several effects we'll be talking about in a few minutes, because it obviously decreases his attributable 2019 compensation substantially. It almost resets and turns it into a brand-new retention because now it's a cliff and he actually has to write us a check for $3 million if he leaves in the next 11 months, which he otherwise would be free to keep the

money forever potentially as of March 1st.

And so this is the one issue that is left. In terms of the hearing, again, because the Court has such a heavy docket, I don't want to take things for granted. As a quick reminder, the only evidence of the December 4th hearing was the Debtor's. There were two very-detailed declarations, both by John Lowne, the Debtor's CFO, which I think was something like 35 very dense pages about these plans, and Josephine Gartrell, a director of Willis Towers Watson, one of the country's preeminent compensation consulting firms. I would also remind the Court that they both spent a long time on the witness stand. This was a very extended hearing, and that Mr. Troop and others had a full opportunity to cross-examine both of those witnesses. And I think their testimony about the plans and their structure and their efficacy and their need and their industry nature, including questions that were asked about some of the topics we'll be discussing today, we're very comfortable with the factual record. No one else had any witnesses or any evidence of any kind.

So now let's talk about Dana II, which is I think sort of based on Your Honor's ruling and our colloquies and the briefing, we're going to sort of treat as the de facto governing standard.

So first -- and I say this quickly, because

obviously I'm going to be addressing the merits in just a moment. Under the express ruling of Dana II, this is the ordinary course of business and does not need court approval. What actually happened in Dana II, as Judge Liftland said -- and I'll be quoting it in a minute -- the AIP at issue in Dana II was, quote, "refined" prepetition, but was still, quote, "similar" to previous programs. He then ruled, and I quote, as to their annual AIP. "Does not differ significantly from Dana's prepetition practice. Accordingly, it is within the ordinary course of the Debtor's business." So there where the plan actually was changed, I think among other things. It made the payment semiannual and accelerated things and tweaked other things. He still found that because those were just refinements and it was, quote, "similar", that it was nonetheless ordinary course.

Here, again, as a reminder, the uncontroverted oral and written testimony of John Lowne was that for 30 years this plan has not changed, including for 2019. Obviously this plan was put in place well before the petition date. I think it was designed in March or so. And obviously we filed in September.

That said, I just want to give the Court, as I always try to do, multiple ways to hopefully see things our way. I'm not going to be addressing what we addressed in

our pleadings, which are the we think procedural impropriety of the joinders to the joinders to the joinders in the late pleadings. We'll leave that for the papers. I don't want to make an issue of that today. But I think on top of those issues, they are ordinary course issues as well.

But now let's talk about the factors. Because we're just as comfortable on the factors as we are with the procedural propriety and potentially the obviation of the need for this hearing at all.

So the factors that Dana II sets forth, and there are six of them, is whether the business judgment standard under 503(c)(3) has been met. And we'll be coming back to that later as well, which is this is a business judgement standard that is tested in specific context.

As a reminder again, and forgive me for using that word a few times, the Court has already concluded with a rather detailed ruling that the Debtor's AIP, which is carefully structured and was described at great length in the submitted evidentiary records, meets this standard with respect to all the other employees. And Dr. Landau's proposed payment is of course under the exact same plan with the exact same metrics that was ruled on in December, and we believe that it satisfies the standards very comfortably as well. I will --

THE COURT: For this point and for the ordinary

course point, the only issue that I believe still exists following the December hearing is whether the revised terms, including as most recently revised, are appropriate taking into account the March 2018 agreement.

MR. HUEBNER: Yeah. I agree, Your Honor.

THE COURT: And that's what I reserved on, because there really wasn't a lot of information until the very last minute in the objections about that arrangement.

MR. HUEBNER: Correct, Your Honor.

THE COURT: That's really what I think we should be focusing on. It's not just the AIP in isolation in other words.

MR. HUEBNER: Agree, agree, and agree, Your Honor, which is why, as I was literally about to say, the first four of the six factors I will address with extreme brevity and then turn to what I think is really the issue, which is the compensation package in light of and including the retention paid in March 2018.

THE COURT: Or agreed to be paid.

MR. HUEBNER: No, it was paid. It was paid in March of 2018. It was a prepaid retention. And I'll be talking about that again. I'll --

THE COURT: Well, except it's now -- the vesting point has now changed.

MR. HUEBNER: Correct, yeah. I'm only talking

about when it was paid.

THE COURT: Okay.

MR. HUEBNER: I'm going to get to vesting in a few minutes.

THE COURT: Okay.

MR. HUEBNER: So let me actually then move to warp speed on the factors that I think are far less relevant. Because it does bear mentioning that there are six factors, and we actually think that there isn't even much to discuss at all on almost all of them.

Whether the plan is calculated to achieve desired performance, I'll just skip it. There was extensive testimony. The Court ruled on this issue. There was the 35-page Lowne declaration. You know, the Debtors have made clear that they and the board of directors believe that Dr. Landau is the right person to read this company during this challenging time, and that this payment is needed to incentivize and compensate him. And so the first factor does actually matter, because the Board's decision, despite the fact that we are aware of the material sums and the material pay package are at issue, actually matter on whether the plan is actually calculated to achieve performance and support the Debtors and their states.

Factor three, whether the scope of the plan is fair and reasonable or discriminates unfairly. Also,

candidly, Your Honor, nothing to discuss here, and it's not contested. The plan applies to all employees. So it tautologically does not discriminate among employees because they are all covered, unlike many plans cover only a select few. And as Your Honor I think appreciated, and the Committee gets credit for pushing us in the negotiations to do this, the changes negotiated with the UCC were massively progressive and not regressive. The more senior you were, the more and more got taken away. And in Dr. Landau's case, more and more by a very wide margin, the most got taken away. And so, you know, it's sort of -- I don't want to say it's anti-discriminatory, but it's highly progressive and not regressive with respect to the UCC's changes, which, as Your Honor knows, were quite material.

Factor five and six, whether the Debtors performed due diligence in investigating the need for the plan and whether the Debtors received independent counsel in performing due diligence in authorizing the plan.

Your Honor, this factor -- these factors I know are close to your heart, because in multiple hearings you've often asked the question, which is not the way the cases necessarily phrase it, you know, do they control their own pay, do they do this themselves, were they able to pull themselves up by their own bootstraps. And of course Your Honor knows, because we had extensive testimony and Your

Honor actually ruled at some length on this, this is the opposite of that. There was extensive professional involvement, extensive diligence. And then as Your Honor noted -- and I'll just read Your Honor's quote, because it's better and faster than anything else. I have to say -- it's just a reminder, we can move on -- in ruling very heavily in the Debtor's favor on this point against the U.S. Trustee, you know, disguised retention plans, Your Honor said among many other things, quote, "In addition to the Debtor's process of analyzing the AIP, which involved independent counsel, the Compensation Committee of the Board, and Willis Towers, the plans were subject to substantial diligence by the UCC and other parties that have a substantial stake in these cases." Things like Willis Towers you actually said the comp. consultant, so there were a couple of brackets in my citation, but you can take it as a matter of integrity that the citation is correct but for bracketed proper nouns. And then of course there has been way more diligence since then.

So, just like Dana II, by the way, where I also note the court also took great comfort in the fact that this was their, quote, second try, because the court actually turned the plans down the first time, unlike our case. But then there were extensive negotiations with the UCC. We obviously have that here in spades. And obviously the UCC

had multiple professionals working on this. And so the idea of thorough diligence, independent counsel, essentially a very carefully considered board decision validated by others after a lot of work is present in spades here. I would shudder to think how much the estate has actually now spent with everybody looking at and analyzing and attacking and changing these plans. But as to Dr. Landau in particular, no one can say it hasn't been thought about in depth.

Now let's talk about the last two factors, which is where we really need to spend our time this morning, whether the cost of the plan is reasonable in the context of the Debtor's assets and liabilities, and whether the payments to Dr. Landau is consistent with industry standards. And I will absolutely discuss those, Your Honor, against the background of the retention payment, as Your Honor asked. And it's all in here, so you can be sure that that's what I was planning to do ab initio.

So, first, the cost of the payment and is it reasonable in the context of the Debtor's assets and liabilities. In other words, it is a very large, complicated case. Numbers are different, jobs are different, roles are different, experience is different, and the like. So as to the cost of payments, Your Honor, as a reminder, we are talking about a grand total after the 63 percent reduction with the UCC of $1.3 million to be made in

two payments later this year. This is for a company with well over a billion dollars in cash, multiple products and product lines, zero dollars in funded debt, hundreds of billions of dollars, or as Your Honor noted, probably the GNP of the entire planet by the time we are finished and liabilities of great complexity, and almost a billion dollars in annual revenue. Thus, in the specific context of the Debtor's assets and asserted liabilities, we think that the greatly-reduced $1.3 million payments are reasonable.

So now let's go to the last factor, which is industry standards and what I'll just call general reasonableness, taking lots of other things into account as the objectors would have us do.

In an attempt to evade the clear factual record of these proceedings, the objectors urged this Court to categorize Dr. Landau's compensation in a way that is unsupported by the record, including the directly on point expert testimony But as you will see in a few minutes, even if I adopt every single judgement that they ask us to make and all of their flawed assumptions about how to look at compensation and how to do industry comparisons, you will see that the numbers prove beyond peradventure that the compensation, even taking into account the retention, is well inside the bounds of industry practice.

Because what the objectors try to do is they take

total direct comp, which the unrebutted, clear testimony of our expert is that when you do apples-to-apples comparisons, you include LTIP, annual, and short-term incentive plans and base salary, because everything else just varies way too much in companies, that in fact Dr. Landau's TDC for 2019 will in fact be well below the 50th percentile.

As a reminder, and Ms. Gartrell expressly testified at the hearing that retention payments and benefits are distinct from and are not analyzed as part of TDC. She could not have been clearer. As she said, quote, "Total direct compensation does not include executive benefits and prerequisites." And two, we would not, quote, "We would not include retention payments in the TDC analysis."

The evidence adduced demonstrates that it would not only be improper, but impossible to compare what the objectors improperly try to present as his, quote, "TDC", which is just the arithmetic total of virtually every dollar he got for virtually any purpose, with only a couple of exceptions against actual TDC.

Even though the expert testimony, which makes perfect sense if you take a step back and think about it, is that TDC includes those three things -- base salary, annual incentives, and long-term incentives, they argue that for benchmark purposes, his total comp. should be deemed to

include things like the retention -- which I'll talk about in a few minutes, and I will show you the numbers to the penny -- and benefits, including things like U.S. housing and U.S. car allowance while living separate from his family, to count that as salary that he's sort of got and kept.

This is improper for many reasons as, among other reasons, there is of course endless variability in the benefits and reimbursements and perks of senior employees at large companies.

It also bears to mention that in this case in particular, many of these expenses are designed to cover the unusual incremental costs to Dr. Landau and his family by relocating to Canada and then back down to the United States while his family stayed in Canada. So a commuting expense when you're ripped away from your family who you previously relocated at the request of the shareholders to be counted as sort of salary and bonus and a comp against executives, where for the other executives the only thing that is counted is salary and bonus, is just not right.

But here's the simple bottom line fact. And now we're going to go to the numbers. Dr. Landau's actual 2019 TDC is $3,932,038. It's comprised of $2,618,788 in base salary and $1,313,250 in the AIP payments if Your Honor grants the relief. That number, and I'm going to build from

there, is barely above the 25th percentile and is way, way below the 50th percentile of $5.015 million. And by the way, that doesn't even account for the fact that the 2019 AIP payments which are now being paid near the end of this year aren't really only 2019 comp anymore. Right? All the other people that are being comped to don't have further strings attached and don't have to work two years sort of for one to get their AIP payments for the prior year.

But now let's do the math. Because even if for the sake of argument you include a hundred percent of the retention payments allocable to 2019 and the calculation of 2019, here's what happens. $2,618,788 in base salary, the proposed AIP payments if Your Honor grants the relief requested of $1,313,250 -- hold on, there's going to be a chart coming with all the numbers -- and retention of $1,863,636. That's the allocable retention to 2019 with the stretch-out.

So what that means is that his TDC for 2019, even if I added in all the allocable retention from the $6 million March 2019 payment that stretches over almost three years now, would be $5,795,674, which is below the midpoint of the 50th and the 75th percentile.

As a reminder, Ms. Gartrell was asked what is competitive industry pay. And she said that it is between the 50th and 75th percentile. So even if we ignore the fact

that he has to work for most or all of 2020 to get the 2019 reduced AIP payments and we ignore the fact, as we'll talk about in a few minutes, that if he leaves during 2020, he has to actually write Purdue a check for $3 million and get zero retention for either 2019 or 2020 and we just pretend that he gets to keep forever the $1.8 million allocable of the $6 million retention to 2019, it's still market comp. No question about it, as testified to by Willis Towers.

But let's go even further. Because there's no fact pattern more or less that I won't cognize. And let's make another improper argument, a leap. And we still satisfy this factor candidly. Because, Your Honor, if you turn to Page 7 of their brief and you look at their chart where they try to say, like, OMG, this is just an obscene amount of money, the number that you get to by adding in expense reimbursements and travel stuff, the U.S. housing, the car, everything, everything, everything, everything, and you just sort of pretend that he got all of it, including the allocated retention irrevocably on December 31st and that was all 2019 comp -- so again, if you take a step back, for everyone else in the entire industry benchmark, nothing gets counted except base salary, LTIP, and AIP. But for Dr. Landau, we're going to count virtually every penny he got and almost $2 million of allocated severance, the grand total is $6.446 million for 2019, which still falls within

the competitive range and is well below the 75th percentile of $7.165 million. In fact, it's almost $700,000 below the 75th percentile.

So, no matter how many breaks I give them in trying to see it their way and how many things I let them improperly load in so that one person is sort of carrying like 50 packages, but the whole rest of the industry is carrying three packages, it still is the case that his 2019 comp, taking into account the attributed retention payment, is well under the 75th percentile.

So now let's just talk about what might happen during 2020. Because from the Board of Directors and the Debtor's perspective, talking about the value to the enterprise and stability and avoiding risk and cost and spending money wisely, we're not unaware that these are material sums. And as the Court correctly noted at the last hearing, there's sort of very little that's less pleasant to have to talk about at a podium and address from the bench in a bankruptcy case as executive compensation. It's just a complicated topic. But the test is still the Dana factors and is this in the best interest of the estate.

So here's where we are now. Dr. Landau now has to stay through virtually all of 2020 to get either or both of this 2019 greatly-reduced AIP payments and to keep not only the $1.8 of the retention that is allocable to 2019, but

actually a full $3 million. Because if he leaves, assuming that Your Honor enters the order as requested with the final massive post-hearing concession, if he leaves before December 31, he not only doesn't get the AIP, which we'll talk about in a second, but he has to write a check to Purdue for $3 million for the latter half of the money he got two years ago in March 2018.

So let's just do the math for a minute. Because, again, there's money at issue here, and the Court and the parties deserve to know the accurate numbers. And we'll talk in a few minutes just for a minute or two about 2018.

If the relief we are requesting is granted, if Dr. Landau leaves before June 1, 2020, he forfeits 100 percent of his 2019 AIP, because he left before either of the two payment dates, and he has to be there on the payment date. And he has to write Purdue a check for $3 million. That means his base salary for 2019 of $2.6 million ends up being the totality of his earnings, which is way below the 25th percentile, and he has to write a check to the company for $3 million. And if he resigns after June 1st, 2020 but before September 1st, 2020, he gets the first of his two AIP payments. So he gets 650 of the 1.3. So his overall 2019 compensation turns out to be $3.775 million, the base salary amount plus 650. But then he has to write Purdue a check for $3 million. So whether you call it that he made $3.7 or

that he made $700,000, I don't need to resolve. Remember that the 50th percentile of TDC is $5.015 million. So he's still way below the 50th percentile, even not taking into account the $3 million refund he owes Purdue, which means he got no retention at all for March 1, 2019 and on. And even if he stays past the September 1 payment but resigns before the December 31 payment, he still forfeits a hundred percent of the unvested $3 million that he has agreed to defer and has to write us a check for $3 million.

That means that his total compensation for 2019 would be $4.4 million, which is the base salary of $2.6 and the AIP. But, again, I leave to others whether they want to see it as $4.4 or $1.4, because he's writing us a check for $3 million. In any event, the 50th percentile is $5.015. So, again, any way you slice it, his actual TDC is well below the 05th percentile.

Now, it's a virtual certainty, Your Honor -- and this is very important, because the goal is always what's good for the estate and is this the right use of money -- that this $1.3 million, payable half in June, half in September, is a very, very small fraction of the many soft and hard costs that Purdue would have to incur if it had to replace the CEO should Dr. Landau decline to work for base salary only. Because obviously if the relief were denied and he were told that it's nothing other than the base

salary he already got, which, as we already discussed, is way below the 25th percentile -- you know, hopefully this would never happen for any number of reasons. But these are the kinds of things the board and the company and presumably the UCC, which agreed to a greatly-reduced package in its business judgement, mirroring the ultimate determination of the Debtors, was there.

And Paragraph 8, Your Honor, of the John Lowne Declaration contains some sworn evidence on not Dr. Landau in particular, but the extreme costs and dislocation to Purdue from replacing people, including senior people. As you might imagine, we don't exactly have people lining up to come work at the company.

Just because -- although it came up, whether or not properly, sort of at the very end of a multi-hearing cycle on these issues, I actually want to spend just a minute on the $6 million payment itself. Because as I said at the last hearing, the Court always deserves comfort as to all parties that we are all doing our level best to steward this thing appropriately.

Surprisingly to me, the objectors' pleading contains an incomplete and in fact misleading characterization of the restructuring that took place in June 2018. I will quote it in full, and then I will tell you what actually happened.

On Page 5 in their filing, in Paragraph 6B, the objectors state, and I quote in full Section 6B, "On March 23, 2018, Purdue prepaid Landau a $6 million retention payment (the prepaid retention). As originally contemplated, the prepaid retention was to vest 50 percent by March 2020 and a hundred percent by March 1, 2022. A few months later, in June 2018, Purdue accelerated the vesting schedule so that Landau would be fully vested in the prepaid retention by March 1, 2020." Closed quote, end of paragraph.

But of course that's not what happened, and they know that. Because they knew it before the hearing even happened in December, because it was in some of their complaints and it was in the MDL stuff. They knew it beyond (indiscernible). We discussed it about 30 times after the hearing. And they knew it because we described it accurately and in detail in our brief. But they chose to misdescribe it.

What actually happened was they cited only one of the three changes that happened in June 2018, leaving out the two very substantial, arguably massive concessions by Dr. Landau as part of the changing of the vesting schedule. What actually happened was that there were three changes. One was the one they quoted to you. The others, which they omitted, were, one, his total severance package was reduced

from $14.5 million, which it could have been at the high end, to a total of no more than $7 million to $8 million because we took out of it all of the future retention payments that hadn't been paid yet, greatly dropping his severance at a time where it was by no means certain where and when and hither and yon this company was going to go.

The second thing that happened was the future retention payments that were already contractually promised were dropped by $2 million. So what actually happened in the June restructure was three things, one of them which was the acceleration of the vesting schedule, which was in Dr. Landau's favor. Two, which were very material, which were take-aways and concessions by Dr. Landau. I should also note that Dr. Landau's most recent concession actually largely reverses the one benefit he got from the accelerated vesting schedule, because that was deaccelerated and it's been pushed out to the end of 2020, adding almost an entire year to it. So, you know, it's sort of -- now we're down to he got half a thing and he gave up two very big things.

And while we're on the subject of voluntary give-ups by Dr. Landau, something we mentioned in our pleading, but because of the way they draft it there is I think worth mentioning. During 2019 as the company's situation got more complicated, Dr. Landau decided to voluntarily and irrevocably give up, just give back for no consideration,

not as part of any trade, several of the benefits that he was entitled to, including the private air travel that they call out in Section 9C of their pleading, and the income loss make whole that they call out in Section 9D of their pleading.

So in fact the very types of benefits that at a minimum are potentially more complicated as a company becomes troubled, Dr. Landau did the right thing well before the petition date and gave them back, saving the company over $250,000 a year and coming off of the numbers in the charts that obviously try and take a picture of just sort of, you know, more and more and more. In fact, it's becoming less and less with the various concessions. So that's that.

So then, you know, look. What I think is going on is really twofold. One is, you know, people seemingly wanting to understand the 2018 retention payment better. Although as I note when we actually went back and read their pre-filing state law complaints -- and by the way, only two -- and this is -- you know, we'll talk about that in a minute, too. Only two of the 48 complaints filed by states named Dr. Landau. There are some interesting language choices in their objection that seem to suggest multiple complains. It's two, right? One of those two actually goes into extraordinary detail, almost like a blow-by-blow. So

none of this was really news to anybody.

So what do I think is really kind of going on? Look, it's always dangerous, but I'll just make a little bit of a thought at least as to some of the objectors. But what's really going on is that 2018 in general, which is the year of high compensation, you know, higher than 2019 and almost surely higher than 2020 is going to be. And I'm happy to take that on also. Because, Your Honor, even if you want to say I don't only want to talk about this retention payment, I want to look at that whole chart on Page 7, and he made a lot of money in 2018. And, you know, it always has to seem right and feel right and not just be right. And even though this is only the last of the Dana factors, here's the story. His actual TDC for 2018 is $6.088 million, which is, once again, well below the 75th percentile of $7.165 million. So even if you look at the highest year and you say it's even relevant, that's where you end up.

Let me give you six thoughts on 2018, and then let me bring this to a close. One, I actually don't think his overall 2018 compensation actually is relevant. I don't know of any caselaw that says you do a multi-year lookback where the annual compensation component is being brought to the court for that year. They certainly didn't cite any law that says that, and I certainly don't see anything in the

cases that I read, and I read quite a few of them, that says that.

Two, even if you were to look at the reduced $1.3 million remaining stretched out 2019 AIP in connection with 2018 compensation, if you add the TDC for 2018 and you add the 2019 TDC, they're less than two times the Willis Towers 2018 TDC 50th percentile. So in fact even if you just say his TDC was very high in 2018, it actually went down substantially in 2019, and the two numbers together are below 5.015 times two, which is the 50th percentile. So even if you want to do like a rolling lookback, that actually still I think gets you to the same place.

Three, all of these things were taken into account by the Debtors and the UCC in reaching a settlement. This was not the Debtor's initial proposal that we're up here still discussing, Your Honor. We worked for weeks with the UCC and other parties. And Dr. Landau took a set of massive cuts on -- and everyone knew the facts and the numbers as part of doing that. And we have one objector group, which is one half of one constituency in the case, saying they feel differently. I just don't think that, frankly, should be weighted the way they would like it to be weighted.

Five, retention payments -- and let's talk about the $6 million straight up. It's a material sum of money. There's no question about it. It's now stretched over three

-- just under three years. Yeah, three years minus two months. So we'll call it three years for rounding purposes, which now equates to about $2 million a year on average for retention. It's there, it's a fact, it's in the numbers. As I've tried to show the Court, even if I load it into TDC and I load it into salary, he's still very comfortably within the percentages that our expert testified are industry standard, which actually is the last Dana prong. In other words to me, Your Honor, that was the core issue, which is Your Honor specifically said, you know, this $6 million payment from 2018 is coming up a little late in the day for me. I'd like you all to go off and talk about it, and I want a better understanding of how it fits into the numbers. So that's what I did 15 or so minutes ago, which is showing you even if I load in not only the allocated retention, but every single one of the expenses that the objectors ask us to, almost every wire transfer he got for any purpose with the exception of a couple of categories, it's still below all of the industry metrics that the experts provide to the Court and are uncontested.

Six, and this is the last point on this. Without the greatly-reduced 2019 AIP being granted, Dr. Landau's actual 2019 TDC would be below the 25th percentile, or sort of off the charts to the left. And there's nothing in the caselaw that says that an employee should be penalized and

paid far, far below market because in prior year a subset of creditors alleges that he or she was paid above market, which it turns out is not even true. But even if it were true, it's just not the law that you sort of make it right several years later by asking somebody to work for a small fraction or a fraction of market pay.

And so at the end of the day, Your Honor, any way you look at it, no matter how much they want to load in, the 2019 compensation with the greatly reduced deal struck by the UCC with the Debtors after weeks of work we think is appropriate and in the estate's best interest.

What I did do, because I know -- you know, I spent a long time thinking about these numbers. May I approach?

THE COURT: I've gone through them.

MR. HUEBNER: Okay. It's really pretty though. (indiscernible).

THE COURT: They're in the papers.

MR. HUEBNER: So, Your Honor, I want to just turn then for one last second to the Insys thing. In other words, my view is that this is closed. Their brief, whatever one wants to call it, their statement in support of their joinder to their joinder, began on Page 3 by saying Your Honor has already ruled on this point. But then had a little mini section with two paragraphs at the end saying actually, no, we want to reopen this.

I have a bunch of things to say about that attempt. But if Your Honor's view as you began before I spoke is that that issue is done and we're only here to discuss the numbers and the $6 million, then I will spare you 2.4 pages of oral argument on the Insys and the clawback issues.

THE COURT: I don't think I need oral argument. I think the parties have addressed it in their pleadings.

MR. HUEBNER: Okay. So, Your Honor, as I said, we tried awfully hard to settle this. We're not unaware of the cost and the burden on everybody for doing this. But, candidly, there was no deal to be had at all of any kind, which was very unfortunate. Dr. Landau, to his credit, I think did the right thing yet again, which is although moving the vesting date ten months was a very big concession, because he's literally a month away from this thing vesting, was supposed to be a trade for can we just, you know, call it a day and move on. And the answer was no, there is no deal to be done here. He nonetheless said you know what, it's the right thing to do, and I intend to stay here through 2020 to see this case to the end, and I'm happy to put not only the $1.3 million of last year's pay on the chopping block if I resign without cause, I'm happy to have the Court be told that I'm putting the $3 million that's just about to vest on the block also. It should have been

enough. It's extremely, extremely unfortunate that after the four changes with the UCC, the big fifth change was not.

THE COURT: Okay.

MR. TROOP: Good afternoon, Your Honor. I am going to try to move at trans-warp speed.

Your Honor, I start with the following. It is not inappropriate for state attorney generals to say we can't consent to the payment of an AIP based upon as a matter of principle --

THE COURT: You don't need to --

MR. TROOP: Okay. Your Honor, second, notwithstanding that, this process has provided benefit to the estate. Benefit described by the Debtors in the pleadings and --

THE COURT: Okay. That's fine, too.

MR. TROOP: Okay. And uncovered $660,000 that has to be repaid.

MR. HUEBNER: So just to be clear, that was done last July. No one uncovered anything. It's just not right.

MR. TROOP: I'm sorry, disclosed for the first time to us the fact that there was a discrepancy in the payments.

MR. HUEBNER: That's correct.

MR. TROOP: Okay. Your Honor, notwithstanding the many questions and back and forth. But from us, Your Honor,

the issue that still remains on the one point is that we understood you to ask for the following. We understood you to ask for an apples-to-apples comparison. Tell me why when you look at a CEO's compensation and you include TDC, retention, whatever other perks they're getting, that those parts all match up against the market? And Mr. Huebner's presentation studiously says, well, let's take those things and put it into the analysis and just compare it against TDC, which may or may not give an accurate description of how this compensation plays out. It surely doesn't account for example, notwithstanding the other concessions in March of 2018, what it means to pay someone in cash the entire amount of a retention payment that was supposed to keep them around until 2022. Right? Well beyond December of this year.

It is -- if we're going to focus on those particular issues, we still think that the presentation and the facts are insufficient. But I don't need to get into the numbers, Your Honor. The numbers are there. We can move them, we can manipulate them. These were the things with which we struggled. And I will represent to you notwithstanding (indiscernible) that didn't need to get into the first part. There's not a single fact and not a single proposal, not a single piece of data that was shared with us by the Debtors that wasn't analyzed and the subject of

discussion. We just couldn't get there, Your Honor, on the settlement. And I otherwise rest on the papers, Your Honor.

THE COURT: Okay, very well. Anyone else? All right.

I held a hearing in early December on the Debtor's motion for approval of various compensation-related programs for 2019. And having heard testimony by the Debtor's compensation expert, Ms. Gartrell, and reviewed the factual record, I overruled the objections that were remaining to the modified relief that the Debtors were seeking, with one exception, which was the 2019 compensation proposal as modified again for the Debtor's CEO, Dr. Landau.

The reason I did that was that the focus or the primary focus of the objection of the ad hoc non-consenting state group to that aspect of the motion only became clear to me basically at the hearing, and, frankly, at the tail end of the hearing. And in the response that was filed shortly before the hearing by the ad hoc group in which a pre-bankruptcy -- that is March 2018, so considerably pre-bankruptcy -- restructuring of Dr. Landau's compensation package, including his severance package was agreed. I believe that at that point I didn't have a sufficient level of information where ruling would be appropriate. That was in part because the focus of the hearing really wasn't on that transaction and how it related to the relief that the

Debtors were currently seeking. In part it was because I had the impression that the Debtors and the ad hoc state group might be looking at the same 2018 agreement differently just in terms of the facts of the agreement and that there should be further discussion as to what its terms actually were. So I adjourned the hearing as far as that limited request for relief was concerned.

The whole subject of in particular executive compensation in bankruptcy cases, as was remarked on by Mr. Huebner in today's hearing, is a difficult one for courts, and in particular for the public to fully understand. Generally speaking, when we get to senior executive levels, we are talking about substantial sums of money, substantially above the amounts that the ordinary everyday person makes, and frankly substantially above the amount that bankruptcy judges make. I'm reminded of Babe Ruth's remark when he was told that he made four times the salary of President Hoover. He said, well, I had a better year than he had. I'm not sure how President Hoover reacted to that, but the ordinary person in the street naturally finds it hard to believe that people make the amount of money that expert testimony shows they make for these types of jobs.

But the important point to keep in mind I believe is that if you cannot get capable people to perform this type of work without paying them that amount of money or

more, or alternatively the replacement cost is greater than what is being proposed, it's really not in the interest of the creditors and not appropriate to say, well, nevertheless they should take a haircut because it seems like a lot of money. In other words, market compensation underlies ultimately the decision that courts make on motions for approval of executive incentive plans where the court has already made, as I have made here, a determination that the plan is primarily incentivizing as opposed to (indiscernible).

You can't leave a company without a chief executive officer. And the universe of replacements, particularly in a situation like this in a complicated, difficult bankruptcy that raises unique issues that requires more than a fair amount of not only general business expertise, but knowledge about the industry and the like, you need someone to run the company. And people don't work, generally speaking, for less than market, whether they're paid $30,000 a year, or $200,000 a year, or several million dollars a year.

Here the specific request before me was for approval of the 2019 AIP, or annual incentive plan, which as compromised by Dr. Landau covers only 50 percent of what that plan would otherwise be up to, well, $1,313,250. He had agreed prior to the December hearing to make that

reduction from a hundred percent to 50 percent, to delay a portion of the payment of that AIP and to forego his long-term retention plan for 2019, which was another $1.530 million.

The Debtors wish me to evaluate the motion simply by looking at that 2019 aggregate of his base compensation plus the 2019 now-reduced annual incentive plan. And it is quite clear from the record that that total compensation or total base compensation is well below the median. In fact, at about the 25 percent range.

The states contend that I should also take into account the $6 million retention payment agreed to in March of 2018, again, well before the September 2019 petition date here. I'm not aware either of any case that looks back that far to a prepetition compensation change for a senior executive in a bankruptcy case. But there were suggestions that at least as of that date the Debtors were contemplating a potential bankruptcy case. And the closer one gets to bankruptcy where there might be pre-bankruptcy increases in compensation that are not well-explained by market or factual data, the more a court should pay attention to them.

I am satisfied, however, based on the record that was already developed, including the negotiations with the Creditor's Committee when Dr. Landau made significant concessions, as well as his additional concession with

regard to the vesting of the remaining portion for 2019 of that $6 million, as well as the further explication which I now accept by the Debtors of the components of his March 23, 2018 agreement. And finally, the mathematical comparisons of market data as developed by Ms. Gartrell, even taking into account the $6 million retention payment, which there are substantial legal issues as to whether it should be taken into account, that to me show that all things considered, again, even fully taking into account that payment as now discounted, Dr. Landau's compensation is at a market rate.

If you take into account his cost reimbursements, which I fully believe would not be appropriate since they seem to be legitimate cost reimbursements, it would be slightly above the median. If you don't take them into account, it would be somewhat below the median. But again, that's assuming you take the full March $6 million into account, notwithstanding the fact that it was well before the petition date, notwithstanding further that it was in the context of further provisions in the agreement whereby he reduced his severance amount by in essence a like amount of dollars and the circumstances under which the company I believe was operating at that time.

I also, again, believe that as of today, given the material concessions that Dr. Landau has made, there is no

question that his compensation on a base level is well below the median, and even taking into account the March 23 agreement is at the median or slightly below it.

The Debtors have raised a couple of procedural points which are worth addressing. It is true that the ad hoc group's objection and the State of Maryland's objection are really joinders in an objection that is not at this point being pursued by the U.S. Trustee. There are consequences in simply filing a joinder. Most importantly, they go to rights of appeal. I don't believe that a joinder gives rise to a right to settle a matter or to appeal it. I do believe, however, that it was appropriate to adjourn the hearing to consider on a more complete record the issues, if for no other reason, to lay out the court's rational ultimately now in approving this remaining aspect of the motion.

I, frankly, did not want there to be a question mark hanging over Dr. Landau's head as to whether he was being given a sweetheart deal or an overly-generous compensation package.

I don’t believe that question mark exists today. On the other hand, I didn't want there to be an unresolved question that he was receiving too much. And again, the record reflects that that's not the case.

Lastly, I did already address, I believe, since

the U.S. Trustee raised it also, the concern that has been raised in the ad hoc group's more recent filing as well, that because Dr. Landau had an important position as chief medical officer for this set of Debtors for several years, and then came back in mid-2017 to become the Debtor's CEO, that he should not receive any portion of his compensation other than his base salary, because there are undeveloped concerns as to whether he individually has criminal or other liability for the Debtor's misconduct.

Dr. Landau has been named in some of the complaints filed against the Debtors, including two of the states' complaints. I have reviewed the attachments to the states', the ad hoc group, that is, opposition to this portion of the motion, which include a ruling denying the motion by, among others, Dr. Landau to dismiss one of the states' complaints.

It appears to me that while that motion was dismissed, it was a motion couched on the types of argument that can be made when a motion to dismiss is filed, and not on an analysis of the facts, since when you make a motion to dismiss, or decide a motion to dismiss, the Court is bound to accept the facts as pled as being true, simple facts that are contradicted by documents in the record.

It is conceivable to me that Dr. Landau could, as alleged in those complaints, have some liability. It is

equally conceivable to me, perhaps more so, given the current nature of the board, and the active role of the creditors' committee that he does not. Given the claw back provisions and non-secreting agreement that he has agreed to abide by in connection with this motion, I believe there's already been struck an appropriate balance coupled with the so-called N.C. features of the order that I've already entered in December, to address such concerns.

I believe it would be wholly inappropriate to in essence, send a Debtor into material risk of not having a chief executive officer merely because a complaint has been filed against him or her that has survived a motion for summary judgment, largely made of jurisdictional grounds. And rather that under these facts, the estates should be protected by what Dr. Landau has agreed to, and what's in the order.

So I will grant the remaining portion of the motion, and the Debtors can submit a, I guess you'd call it a supplemental order on that, granting that relief.

MR. HUEBNER: Thank you, Your Honor. On the subject of orders, just so the Chambers knows, at 10:44 this morning, Ms. Benedict sent to chambers the protective order again.

THE COURT: Okay.

MR. HUEBNER: So hopefully (indiscernible) she can

sit here and transmit what's requested as it's being asked for.

THE COURT: Okay.

MR. HUEBNER: So hopefully you'll have those both by end of day.

THE COURT: Very well.

MR. HUEBNER: I do think we have one more proposed order, attach the motion of -- with respect to Dr. Landau, we'll separately resubmit it in whatever magical way we do that, so that you have it separately.

THE COURT: Right, okay, that's fine.

MR. HUEBNER: Your Honor, that brings us to the last agenda item, which is the motion to lift the stay, which obviously (indiscernible) is no longer ours.

THE COURT: Okay. I -- people who want to leave because they're not absorbed by this motion, notwithstanding that it's important, are free to do so. Okay. And that goes for people who are on the phone as well.

MR. CALHOUN: May have found the only thing that's more scintillating than executive compensation to talk about, Your Honor, which is insurance coverage and lift stay motions. George Calhoun, of Ifrah, PLLC, on behalf of Ironshore Specialty Insurance Company, formerly known as TIG Specialty Insurance Company.

Your Honor, I'm not going to belabor all the

materials that were submitted by the -- my client and the objectors in the various papers. I do want to highlight a couple of issues for Your Honor. TIG did issue a policy, insurance policy to Purdue Frederick, which is a non-Debtor in 2000. Several of the Debtors are insured under that policy. TIG initiated an arbitration in 2018, pre-petition with respect to some -- a number of coverage issues.

THE COURT: Can I ask you a question on that? The arbitration clause said any party to this dispute may, once a claim or demand on his part has been denied or remains unsatisfied for a period of 20 calendar days by any other -- through the notification process initiative the arbitration.

The Debtors say there's been -- there was something that happened in 2001, a notice. But the Debtors said they have not made any claim on the insurance. So how does this fit into a claim or demand? I appreciate the parties invoke -- I mean, they, it doesn't appear that they ever raised this issue, and the arbitration panel has been formed. But where there's been no claim on the insurance?

MR. CALHOUN: So Your Honor, the issue of whether there's been a claim on insurance is a specialized issue in insurance law.

THE COURT: Okay.

MR. CALHOUN: And if the claim was reasonably foreseeable, then coverage litigation is appropriate.

THE COURT: Well, but has it been denied? Or remains unsatisfied?

MR. CALHOUN: So Your Honor, there is not a -- so, two issues with respect to that, Your Honor. No, there is not a claim that -- we have, by invoking the coverage defenses, said that we're not covering this type of claim, so --

THE COURT: So that would constitute a claim?

MR. CALHOUN: Yes, to the extent their claims that they've given us notice of, we said those aren't covered, and we've instituted an arbitration to say, arbitrable panel confirmed that these types of claims that they've provided us notice with are not covered.

THE COURT: And the Debtors -- so you sent the Debtors a claim saying this, we denied coverage?

MR. CALHOUN: Not in that -- Your Honor, we instituted the arbitration, and we've had --

THE COURT: No, but there's this -- I appreciated -- maybe his is all waived by the Debtors, I don't know if they've waived that right. But I mean, it does say, once a claim or demand on his part has been denied or remains unsatisfied, and then you go on to the notice period.

So I mean, there's a claim or demand, and then there's a denial or remaining unsatisfied. And I'm just not, I don't, it doesn't leap out to me that any of those --

it's two of one or two of the other, any of those two things happened.

MR. CALHOUN: Your Honor, thankfully, I don't think you have to resolve that. That's an issue for the arbitrable panel.

THE COURT: Okay, why? I mean, you're saying it has to be arbitrated. Even under the arbitration decisions, one of the four things to consider is whether it's really covered by the arbitration agreement.

MR. CALHOUN: You're right, and that issue, the issue of whether this is ripe, which is what you're going to --

THE COURT: I'm not talking about ripe. I'm talking about whether this contract actually applies, at this point. It may apply in the future, but I'm just, int his point, does it really apply?

MR. CALHOUN: Your Honor, absolutely, we believe that it does.

THE COURT: But why?

MR. CALHOUN: Your Honor, because they have given us notice of claims, which is --

THE COURT: That's from 2001, right?

MR. CALHOUN: And 2005, and then through their later conduct.

THE COURT: They started in 2001, right.

MR. CALHOUN: Yep. And being on notice of those claims, we determined that they, under our, my clients believe, that they're not covered. Other words, is denied --

THE COURT: Well, was it denied? Was the notice of claims, is that the type of thing that can be denied?

MR. CALHOUN: If an insurer denies coverage, yes.

THE COURT: Did that happen?

MR. CALHOUN: I don't know if there was a formal denial, or whether it was in the form of a reservation of rights.

THE COURT: Well, it doesn't say reserve rights. It says denied or remains unsatisfied. It wouldn't be unsatisfied, because it's just a notice of claim, it's not a demand.

MR. CALHOUN: Correct.

THE COURT: So it would have to be a notice of claim, as opposed to a claim. And you're telling me under insurance law, it's the same thing. And then that's denied. But is a denial something less than saying, we deny coverage? I mean, there are consequences for denying coverage.

MR. CALHOUN: That's correct, Your Honor.

THE COURT: I mean, there are serious consequences for insurers. So if that hasn't happened, I would think

under the language of this agreement, that's not a \denial.

MR. CALHOUN: Well, that's all set forth in the arbitration. And I think that issue of whether or not there's been a sufficient denial of that is arbitrable. It stars with any dispute under this. You'll be -- shall be, final and fully determined (indiscernible) pursuant to the English Arbitration Act. I mean --

THE COURT: No, but it says you start the arbitration once a claim or demand on his part has been denied, or remains unsatisfied. So you don't get into the arbitration unless that's happened. I mean, this -- I'm, put it differently, I appreciate that the arbitrators may have an issue as to whether the denial is proper, or even whether it's occurred. That's an issue. But there's a separate issue, which is whether this contract actually sets up the arbitration by this provision, whether this provision has been triggered yet.

MR. CALHOUN: Well, certainly, Your Honor, there is an arbitration. I mean, there already is an arbitration.

THE COURT: Well, I appreciate that, and that's why I raised the waiver issue. But on the other hand, the way I read this provision to work is that it kind of just gets started on its own, once the notice is given. And to me, that still leaves open the issue as to whether the right to give the notice was -- exists, and whether this is

actually covered, this dispute is covered by this provision.

MR. CALHOUN: Your Honor, obviously we believe that it is, and that's why we filed the arbitration.

THE COURT: Well, I know you do, but you haven't told me yet why. I mean, was there a denial of coverage?

MR. CALHOUN: Implicitly in the filing of the arbitration, yes, Your Honor. If he wants to supplement --

THE COURT: Has there been an actual written denial, saying we deny coverage?

MR. CALHOUN: I have personally not seen that, Your Honor.

THE COURT: Okay.

MR. CALHOUN: So the reason I am reluctant to say it is I'm not the coverage counsel.

THE COURT: Right.

MR. CALHOUN: And I was not counsel when this was filed, so I just don't personally know the answer to that.

THE COURT: Okay, and look, I'm not an insurance lawyer, but I've done enough insurance cases to know that an actual denial of coverage is a big deal, and sometimes insurers try to get around it by saying, well, there are issues. And it's not the same thing, and they know it.

And so I think when they use the phrase denied in an agreement like this, its's more than just saying there are issues. We want to find out before we deny, in other

words. I mean, if the arbitration is just to see a determination whether we have a right to deny or not, I don't know if it is. I mean, this is just -- but if it is, it would seem to me that this contract doesn't cover it. because that's not what the contract says. It says there has to be a denial.

MR. CALHOUN: Well, implicitly, then, Your Honor, there -- the arbitration has been filed. And that issue is before the arbitrators, whether -- the issue of arbitrability is one --

THE COURT: Have they said, has --

MR. CALHOUN: The Debtor has not --

THE COURT: Has Iron, what's the new name? Ironshore Specialty, has Ironshore Specialty made a denial?

MR. CALHOUN: I don't know, Your Honor. I just don’t -- can supplement whether or not it's been a denial or it was a reservation, but --

THE COURT: I wanted to get that out at the beginning, because you're going through the factual record. It just wasn't clear to me. It still isn't, really.

MR. CALHOUN: I appreciate that, Your Honor.

THE COURT: Okay.

MR. CALHOUN: I do think that issue is one that's for the arbitration. The Debtor in the arbitration, as I understand it, has raised the issue of whether it was right.

I don't believe they've raised the issue of arbitrability. So I don't believe that that is a dispute.

THE COURT: Okay.

MR. CALHOUN: I do believe they've argued that we haven't made a demand yet, therefore it's not right.

MR. CALHOUN: Well, let me just ask. Have you, is that -- the Debtors think that issue's waived as to whether this provision applies?

MR. MCCLAMMY: No, no, Your Honor, we don't think that issue's waived. My understanding is that the issue of arbitrability has actually been raised in the arbitration proceeding. So, and we note that in our --

THE COURT: Well, that could be a lot of different things. It could be ripeness, for example. Which is -- but ripeness can be a lot of things too. Is it right under the contract, or is it ripe under the facts?

MR. MCCLAMMY: Exactly.

THE COURT: Okay, so we don't really know today.

MR. MCCLAMMY: Not in detail.

THE COURT: All right.

MR. MCCLAMMY: My understanding is that all those issues have been preserved in the proceeding. But at the end of the day, as far as the ultimate determination on this case, I'm not so sure on the merits.

THE COURT: Okay, do you know whether there's been

an actual denial of coverage?

MR. MCCLAMMY: There have been notices filed, and my understanding is that there have been denials of the applicability of the coverage. I don't believe that that necessarily covers the answer to that question, which is, has there been the actual denial of coverage as it would pertain here?

THE COURT: Yep, and what was the response to the notice, saying no, you have -- you do cover us?

MR. MCCLAMMY: Right, right.

THE COURT: Has that been sent back by the Debtors?

MR. MCCLAMMY: That, I'm not sure if there's been correspondence back on that, Your Honor.

THE COURT: Okay.

MR. MCCLAMMY: Your Honor, so my understanding form coverage counsel is that the denial did not come until after the arbitration. The issue with respect to that is that we have, in fact, raised those issues in the arbitration. We have not contested the arbitration, but we are raising those issues, raising those issues there.

THE COURT: Okay, okay.

MR. CALHOUN: So Your Honor, as you know, we are seeking relief, and for two bases. One of them is the contention that because this is arbitrable, which I

understand Your Honor's point, that alone is cause for relief from stay under some of the authority in this district.

And the responses really go into disputes under the Sonnax factors, which I will address briefly. Where there has been -- where there's a prepetition arbitration, Your Honor, we think you'd be forced to abstain if this -- if they attempted to bring this into the Court, because it's a prepetition matter based on state law, be timely resolved, because it's a pre-petition matter based on state law, be timely resolved, if a timely motion was brought.

THE COURT: But they say -- they say they're not looking to bring it into this court at this point.

MR. CALHOUN: No, they're saying they don't want it -- they don't want it resolved at all.

THE COURT: Well, at least not for now.

MR. CALHOUN: Right.

THE COURT: At some point they may have to resolve. But not for now.

MR. CALHOUN: The point is, Your Honor, they don't -- they're not in complete control of that. We are, in this case, we're the plaintiff.

THE COURT: Well, can I -- you analogized this to abstention, and it really is very close. I mean, it's basically -- FAA is a federal abstention statute. So if you

abstain, you're abstaining from something, and you send it off to where it was before. What am I abstaining from at this point? Nothing, right? There's nothing in front of me.

MR. CALHOUN: Abstention is an analogy, Your Honor.

THE COURT: But it's the same -- isn't it the same thing here? I mean, the FAA says where something should eb decided, but it doesn't say that it has to be decided now, notwithstanding the automatic stay.

MR. CALHOUN: Correct, Your Honor. I agree with you on that.

THE COURT: Okay.

MR. CALHOUN: I think we all agree on that.

THE COURT: All right.

MR. CALHOUN: I don't think there's a dispute. But a number of --

THE COURT: Well, but there is a dispute as to whether the Sonnax factors apply or not, and it seems to me that the better argument, based on the very close analogy with abstention is they wouldn't apply, if the Debtors are looking to do something here or in some other form, other than arbitration.

But if they're not, then they do apply, because it's really just a question of whether you let litigation go

forward that the Debtors aren't pursuing at this point.

MR. CALHOUN: Fair enough, Your Honor. And you know, we've cited on papers the cases that talk about this Court's limited discretion to allow arbitration to go forward. But I think it's -- because of Your Honor's observation and the way things are, I think it's just appropriate to address the Sonnax factors, and why we think it should go forward now.

THE COURT: Okay, all right.

MR. CALHOUN: Unfortunately, the Sonnax test is a 12-factor test, and I think we can all agree that judges can read it just about any way they want, one way or another. But I want to focus on the points that the objectors said heavily weigh in their favor. Because we disagree with them. The first one is that they contend that this will lead to unnecessary costs that the estate will incur.

This was the same argument that the objectors made in the Quigley matter, that we don't want to deal with this now, we'll deal with it later, and other parties will bear the cost. That's not a factor here. A hundred percent of the Debtor's assets are going forward into whatever post-petition entity comes out of this. Those costs, it's a half dozen of one, six of the other. Those costs are going to be borne at some point in time regardless.

THE COURT: Although Quigley involved the

Wellington agreement, so everyone was going to be involved, right?

MR. CALHOUN: It's true that more parties were involved in that, Your Honor. I don't think that cuts against us here. One of the other factors is obviously whether or not this will distract from the Debtor's reorganization. In Quigley, there was a question of whether or not that plan was feasible, even, because of the availability of insurance coverage. That plan very much depended on insurance coverage. This case does not turn on insurance coverage.

THE COURT: But I guess I read Quigley a little differently. It seemed to me that Judge Bernstein in that case was really focusing heavily on the -- what I usually focus on, which is the efficient use of judicial, or arbitrable resources, what you get out of the lawsuit.

And in Quigley, the issues were very nicely focused among all the insurers, or substantially all of them, in this one setting. And they were pretty much ready to be decided. And because most of the parties were parties do their arbitration provision, they were going to have to be decided at some point in the arbitration, as long as it was structured properly.

And in Quigley, he actually dealt with, you know, he says I suggested that a resolution of the coverage issue

through arbitration might prompt a resolution of the entire coverage dispute. At a minimum, it was most of the dollars in dispute. According to the stay release we'll have a greater chance of encouraging a compete resolution of the issues, and will promote the interests of judicial economy.

Whereas here, we don't even have the claims in yet. We don't even know what these types of claims are that are going to be the subject of the arbitration.

MR. CALHOUN: I disagree with that, Your Honor.

THE COURT: Okay.

MR. CALHOUN: A, I brought that motion in Quigley, and so I'm very familiar with it. And certainly that would -- the efficiency was a factor there, but that was in a little bit of a different context, because the insurers had brought an adversary proceeding. We moved to stay that in favor of this arbitration, because there were a number of parties that were factors there.

But as in Quigley, as in here, ultimately the plan didn't depend on, I think, those insurance dollars, although there was a feasibility issue working in the background of Quigley that is not working in the background here. It's a different case.

THE COURT: But I will not -- I mean, whether a plan depends on something or not doesn't really control Sonnax. I mean, I will very often deny a lift stay motion

to continue pre-petition litigation, because I'll say to the claimant, you're going to spend all this money, you may lose, in which case you'll have no claim, or you'll win, and you have no idea what you're going to get. Because you'll get anywhere from no cents on the dollar, because unsecured creditors will be out of the money, to a hundred cents.

We have no idea yet. There's no bar date, there's no claim. Doesn't have anything to do with the plan. It's just the efficient use of the forum to solve the particular issue at stake.

MR. CALHOUN: Well, I think -- and that's what we think will happen here, Your Honor. The issues that we're raising, the coverage issues in large part go to, are these types of claims covered? We do know the types of claims, Your Honor, because there have been complaints, and notices given to us about the types of claims that they're (indiscernible).

For example, claims by the state AGs. We contend those types of claims are not covered for exactly the reason Your Honor noted today, states don't have personal injuries. They've given us notice of those claims under our insurance policies. We say that type of claim was not covered. That will be decided --

THE COURT: We'll actually have the claims at the end of June. I don't understand why we wouldn't wait until

then to decide how to structure this. I mean, we'll have the claims. They're under, you know, most of these complaints, if they've gone anywhere have gone to -- I'm sorry, most of the complaints that have gone anywhere have just gone to a motion to dismiss stage. That's different than having to set out your claim in a bar date notice.

And it may well be that when this is all -- that claims come in, you'll see that the true PI claims are X hundred million or billion, or whatever. And the -- you'll actually have the claim at that point, from the States. I don't -- I don't know why we're doing this now. Plus of which, it's only one of how many insurers?

MR. CALHOUN: A bunch, Your Honor. But that's -- but it's the only one that chose to file an arbitration pre-petition.

THE COURT: Well, okay. That, maybe it doesn't say that -- but I don't want to -- I will say this in a way that won't cast dispersions. But I'll suggest that maybe the majority is thinking more efficiently than the minority?

MR. CALHOUN: I'm not going to speak to whether or not it's -- what their trial strategy is.

THE COURT: I mean, insurers definitely know how to spend their litigation dollars. And out of how many are there? There's at least 25, or is it 75? I forget.

MR. CALHOUN: I know there are at least 19 other,

based on their filing.

THE COURT: Around 20.

MR. CALHOUN: Yeah.

THE COURT: So --

MR. CALHOUN: The point is, Your Honor, is that we believe that it actually -- resolving this issue early is -- will be beneficial to the estate. I mean, what, none of the objections that you received said we wanted to -- this is asking you to decide a really, they want to decide a really important point about the allowance, and allocation, and all these issues that aren't involved in the arbitration, which was a little bit telling, in my mind --

THE COURT: I under -- I'm just looking at whether this is the right time to do it. And I'm concerned about three things. First, I'm concerned that we don't really have the claims. So if it's an arbitration about whether claims are covered or not, and you don't have the claims, then it seems like it's premature.

Secondly, I'm concerned that only one out of the at least 20 insurers have chosen this route. And the Debtors have not chosen this route. So you're -- the vast majority of the people who are trying to spend their litigation dollars efficiently have said, this isn't what we should do.

Now, maybe that's just because insurers want to

put off the day when they pay. That's certainly understandable. But okay, there may well be a reason for that. they will know better when the claims come in that the -- where to go with determining the issues. I mean, maybe it can be part of a settlement. I mean, frankly they get protection under 524 equivalents, for example.

And then lastly, I did have the issue about the -- whether, I mean, like Judge Bernstein in Quigley, if I were to lift the stay, I would want to know that this was a comprehensive solution, not just that one insurer could get a victory that would be collateral estoppel on the Debtors, but if it lost, it wouldn't necessarily be collateral estoppel on the other insurers. And if the other ones had not invoked arbitration, and maybe that's because the contract actually doesn't provide for it at this point, it's not going to be comprehensive, it's just going to be piecemeal.

So it's dragged -- in essence, it would be dragging them into something that maybe doesn't even apply, but even if it did, they don't want to do it yet. They haven't sent out the notice.

MR. CALHOUN: I don't think we can -- I'm not taking the position whether or not we can drag other insurers into our arbitration. This is not -- Wellington was different because it was a group agreement. These are

our one-off, individual agreements.

THE COURT: Right, right. So it seems to me that this is -- it may ultimately be, and the Debtors have chosen not really to brief the core issue on arbitrability. It may be that it has to go to an arbitration, at some point. It just seems to me that it doesn't seem to be very efficient, to be doing it now.

MR. CALHOUN: It certainly resolves all of my client's 1issues, and --

THE COURT: Well, okay, that's fine.

MR. CALHOUN: And I think it would be instructive, at least, to the Debtors and to the other parties to the extent the Debtors share the outcome -- to the extent that there's issues of, are these types of claims covered? They might want to know that sooner rather than later.

THE COURT: Well the other, I guess the other point -- this has been pending since 2001, these issues? Why now? Why is it more important now than back in, from between 2001 and 2018?

MR. CALHOUN: I think, Your Honor, the answer to that is simply by looking at what the states have been doing, and the profile of this issue just became so much larger and more significant, and the costs that were being alleged became, such that it became.

THE COURT: But you all aren’t paying anything

yet. There's been no claim --

MR. CALHOUN: There's been a claim, Your Honor, there hasn't been a demand.

THE COURT: Demand, I'm sorry, there's been no demand to pay. I'm using the wrong terminology, yeah. So I guess you do have to make some sort of reserve, but there's a fair amount of discretion in that, right?

MR. CALHOUN: (indiscernible) totally --

THE COURT: That's a separate thing.

MR. CALHOUN: Separate and somewhat taboo things.

THE COURT: So even as far as the balancing the harms goes, it would be nice for the insurer to get a ruling. But you could do most of that analysis separately. You've dealt with these types of issues, you've briefed them. You could analyze them. There's separate reserve issues for them. I don't even see why it's that -- I don't see why we don't get the actual claims in and then look at it.

MR. CALHOUN: Well, Your Honor, if it's as simple as us analyzing the issues, then people like Ms. Quinn wouldn't have a job to come -- to tell insurers that we're wrong. So the fact that we can analyze this, and it doesn't appear that there's coverage for any state or municipality claims under these policies because they don't allege personal injuries, if it were that simple, the Debtors

wouldn't have given us notice of these claims, and said that we think we might be liable for these. It's not that simple.

THE COURT: No, I appreciate it's not simple. It just seems to me that having one insurer under one policy, have an arbitration wouldn't necessarily be binding on the other insurers, because it's not efficient --

MR. CALHOUN: It wouldn't necessarily be binding. It might be instructive.

THE COURT: That's the same point you were just making, that you can instruct people in a negotiation.

MR. CALHOUN: It is kind of ironic, Your Honor, because they (indiscernible) the argument that there'd be a flood of claims, if you let us go forward, and (indiscernible) --

THE COURT: Well, I'm not sure that's the case, but I think that it would be efficient to have it all done at once. But I'm not sure there would be a flood of -- A, I don't believe that anyone -- I mean, no one has chimed in and say yeah, we want that too. No insurer has filed a pleading said, we want that also.

MR. CALHOUN: No, but (indiscernible).

THE COURT: Well, probably like, why are you doing this? No, it may have been that we're interested in wanting to do it. Not pejoratively. But I just, I really think

it's premature.

MR. CALHOUN: I hear Your Honor. So I don't have anything else to add that's not in our papers. So if you have any other questions, I'll sit and listen to you.

THE COURT: I mean, I could torture out all by asking of further briefing on arbitrability under the agreement, and whether this is a core proceeding or not. But I don't -- I think that's premature, too. Because no one is -- no one except for, well, I'll say TIG or Ironshore is interested in this, at this point, in pursuing it. So I think it's premature.

Since it's really a collective insurer policy type of issue, it may well materialize, at which point arbitration may well be compelled. But even, I mean, one of the reasons I'm not asking for briefing on the core issue is that I don't know what the facts will be then. It may well be that this is a matter that must be arbitrated. But conceivably, there may be facts like U.S. Lines which would say it shouldn't be. I'm skeptical of that, but it might be, and we just don't know at this point.

MR. CALHOUN: Yeah, we can have that conversation about U.S. Lines, actually we don't think it's --

THE COURT: Well, I'm not one to tell the Second Circuit that, particularly since I helped win that one.

MR. CALHOUN: Well, no, I think you can get --

look, although I think it's wrong, and I think there's reasons you can say it's wrong, you don't have to get there. This case is just so much different, because U.S. Lines (indiscernible) of claims.

THE COURT: Well, I don't know, because we don't really have the claims in yet. I don't know how it fits into the plan process. I mean, since I represented the Debtors in U.S. Lines, U.S. Lines, the asbestos claims were important in U.S. Lines, but they -- it wasn't the whole case by any means. So it's -- I don't know. It's largely because I think you need to see how the claims come in, and how the insurance ties in to the case.

MR. CALHOUN: Your Honor, (indiscernible) --

THE COURT: That will help determine how, whether this is core or not, that I'm not going to ask for briefing on that issue now. And I think that's the reason why this is not required abstention, because it's not an issue in the case yet. It's -- and that's why we don't have the facts. It's not really an issue in the case yet, so you can't make the determination under (indiscernible) galleries, and the cases where there is an issue that comes up hot and heavy, and both sides want to have the answer.

Only one side wants the answer today, and it's not the Debtor. So to me, you actually do have to look at the Sonnax factors, because there's nothing to abstain from, and

you can't do the core, non-core, and if it's core, is it truly important analysis, based on today's facts? Because it's just not there. And you shouldn't have to do it, because it's premature.

MR. CALHOUN: I hear Your Honor. And though we don't agree with you, would it make sense for us to withdraw the motion without prejudice until after the bar date?

THE COURT: Yeah, yes. Or you can adjourn it to a date in July, if you want. That's fine, then you don't have to refile it.

MR. CALHOUN: I think that makes more sense. Then we can talk to the Debtor and see --

THE COURT: I'm happy to have it be schedule to an omnibus date in July.

MR. CALHOUN: I think that would be probably more efficient than continuing --

THE COURT: And then we'll see where it is at that point. Okay, thank you.

MR. MCCLAMMY: Thank you, Your Honor. That will work for us as well.

THE COURT: Okay.

MR. CALHOUN: Your Honor, we have nothing further.

THE COURT: You have nothing further, okay, so --

MR. CALHOUN: Except you should be comfortable, plenty of other people will torture us in your absence, if

the past is a predictor of the future. Have a wonderful weekend.

THE COURT: All right, and see you in February.

(Whereupon these proceedings were concluded at 1:36 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde
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